

BILL 39

Electricity Act

Her Majesty, by and with the advice and consent of the Legislative Assembly of New Brunswick, enacts as follows:

PART 1

DEFINITIONS AND INTERPRETATION

Definitions

1 The following definitions apply in this Act.

“amalgamating corporations” means (*personnes morales fusionnantes*)

(a) the New Brunswick Power Holding Corporation, continued under the *Business Corporations Act* on October 1, 2004,

(b) the New Brunswick Power Distribution and Customer Service Corporation, incorporated under the *Business Corporations Act* on February 5, 2004,

(c) the New Brunswick Power Nuclear Corporation, incorporated under the *Business Corporations Act* on February 5, 2004,

(d) the New Brunswick Power Transmission Corporation, incorporated under the *Business Corporations Act* on February 5, 2004,

(e) the New Brunswick Power Coleson Cove Corporation, incorporated under the *Business Corporations Act* on February 5, 2004,

(f) Mine Reclamation Inc., the corporation that was continued under the *Business Corporations Act* on April 29, 1986, under the name N. B. Coal Limited and whose name was changed to Mine Reclamation Inc. by certificate of amendment issued under the *Business Corporations Act* on January 11, 2010,

(g) the New Brunswick Electric Finance Corporation, incorporated under the *Business Corporations Act* on October 1, 2004, and

(h) the New Brunswick System Operator, established under section 40 of the *Electricity Act*, chapter E-4.6 of the Acts of New Brunswick, 2003.

“ancillary services” means those services necessary to support the transmission of capacity and energy from points of receipt to points of delivery while maintaining the reliable operation of the integrated electricity system. (*services accessoires*)

“approved reliability standard” means a reliability standard that is approved by the Board, including any modifications to it that are approved by the Board. (*normes de fiabilité approuvées*)

“approved transmission tariff” means the transmission tariff approved or fixed by the Board and includes any change approved or made by the Board to that transmission tariff. (*tarif de transport agréé*)

“articles” means articles as defined in the *Business Corporations Act*. (*statuts*)

“Board” means the New Brunswick Energy and Utilities Board continued under the *Energy and Utilities Board Act*. (*Commission*)

“bulk power system” means the bulk power system as defined in the regulations. (*réseau de production-transport*)

“capacity-based ancillary services” means those ancillary services that are comprised of generation or load capacity that can be called on to vary supply or load. (*services accessoires fondés sur la capacité*)

“Chair” means the Chair of the board of directors of the Corporation. (*président*)

“compliance body” means any body designated as a compliance body in the regulations. (*organisme de contrôle*)

“Consolidated Fund” means the Consolidated Fund as defined in the *Financial Administration Act*. (*Fonds consolidé*)

“consumer” means a person who uses, for the person’s own consumption, electricity that the person did not generate. (*consommateur*)

“Corporation” means the corporation amalgamated and continued under subsection 3(1). (*Société*)

“Court” means The Court of Queen’s Bench of New Brunswick. (*Cour*)

“Crown” means Her Majesty the Queen in right of the Province of New Brunswick. (*Couronne*)

“Director” means Director as defined in the *Business Corporations Act*. (*Directeur*)

“distributed generation” means distributed generation as defined in the regulations. (*production distribuée*)

“distribution electric utility” means the Corporation or a municipal distribution utility. (*entreprise de distribution d’électricité*)

“distribution system” means a system for distributing electricity to consumers at voltages of less than 69 kilovolts, and includes any structures, equipment or other things used for that purpose. (*réseau de distribution*)

“electricity business rules” means the electricity business rules established under section 74. (*règles commerciales régissant l’électricité*)

“generation facility” means a facility for generating electricity or providing ancillary services, other than ancillary services provided by a transmitter through the operation of a transmission

system, and includes any structures, equipment or other things used for that purpose. (*installation de production*)

“inspector” means an inspector appointed under section 133. (*inspecteur*)

“integrated electricity system” means the transmission systems in the Province and the structures, equipment or other things that connect those transmission systems with generation facilities and distribution systems in the Province and with transmission systems outside the Province. (*réseau électrique intégré*)

“land” includes any estate, term, easement, right or other interest in land. (*bien-fonds*)

“land registration office” means a registry office established under the *Registry Act* or a land titles office established under the *Land Titles Act*. (*bureau d’enregistrement des biens-fonds*)

“Marketing Corporation” means the New Brunswick Energy Marketing Corporation. (*Corporation de commercialisation*)

“Minister” means the Minister of Energy and Mines and includes any person designated by the Minister to act on the Minister’s behalf. (*ministre*)

“municipal distribution utility”, with respect to the distribution of electricity, means (*entreprise municipale de distribution d’électricité*)

(a) The Power Commission of The City of Saint John,

(b) the city of Edmundston, or

(c) the Perth-Andover Electric Light Commission.

“New Brunswick Energy Marketing Corporation” means the corporation referred to in subsection 51(1). (*Corporation de commercialisation d’énergie du Nouveau-Brunswick*)

“net metering” means net metering as defined in the regulations. (*mesurage net*)

“President and Chief Executive Officer” means the President and Chief Executive Officer of the Corporation. (*président-directeur général*)

“rates” includes tolls or charges. (*tarifs*)

“reliability standard” means a standard, rule or requirement established by a standards body for the planning, design or operation of the bulk power system within the interconnected electricity grid, for the purpose of (*normes de fiabilité*)

(a) providing a continuous supply of power, at acceptable voltage and frequency, in the Province and within the interconnected electricity grid, and

(b) minimizing instability, uncontrolled separation or cascading failures, and uncontrolled electricity flows, in the Province and within the interconnected electricity grid.

“revenue requirements” means the annual amount of revenue required to cover projected operation, maintenance and administrative expenses, amortization expenses, taxes, interest and other financing expenses and a reasonable return. (*besoins en revenus*)

“security” means a security as defined in the *Securities Act*. (*valeur mobilière*)

“standards body” means any body designated as a standards body in the regulations. (*organisme de normalisation*)

“subsidiary” has the same meaning as in the *Business Corporations Act*. (*filiale*)

“transmission revenue requirements” means, in relation to the provision of transmission service and ancillary services, the annual amount of revenue required by a transmitter to cover projected operation, maintenance and administrative expenses, amortization expenses, taxes, interest and other financing expenses and a reasonable return on equity. (*besoins en revenus afférents au transport*)

“transmission service” means the movement or transfer of electricity at voltages of 69 kilovolts or more over an interconnected group of lines and associated equipment between points of receipt and points of delivery to a consumer or to another electric system. (*service de transport*)

“transmission system” means a system for providing transmission service, and includes any structures, equipment or other things used for that service. (*réseau de transport*)

“transmission tariff” means a schedule of rates, terms and conditions, and classifications, including rules for calculation of rates, for the provision of transmission service and ancillary services. (*tarif de transport*)

“transmitter” means (*transporteur*)

(a) the Corporation, and

(b) any other person who, immediately before the commencement of this definition, owned a transmission system within the Province as well as any subsequent owner of that transmission system.

“Vice-Chair” means the Vice-Chair of the board of directors of the Corporation. (*vice-président*)

“works” means the facilities that are used to generate, distribute or transmit electricity, and includes any structures, equipment or other things used for that purpose. (*ouvrage*)

Conflict

2(1) If a conflict exists between a provision of this Act or of any regulation made under this Act, and a provision of another Act or of any regulation made under that Act, the provision of this Act or of the regulation made under this Act prevails.

2(2) If a conflict exists between a provision of the approved transmission tariff and a provision of the electricity business rules, the provision of the approved transmission tariff prevails.

2(3) If a conflict exists between a provision of an approved reliability standard and a provision of the electricity business rules, the more stringent provision prevails.

2(4) If a conflict exists between a provision of an approved reliability standard and a provision of the approved transmission tariff, the more stringent provision prevails.

PART 2

NEW BRUNSWICK

POWER CORPORATION

Division A

Amalgamation

Amalgamated corporation

3(1) Despite the *Business Corporations Act*, the amalgamating corporations are amalgamated and shall continue as a corporation with share capital under the name New Brunswick Power Corporation in English and *Société d'énergie du Nouveau-Brunswick* in French.

3(2) The Corporation may use and be legally designated by the English or French version of its name.

3(3) The Corporation is a Crown corporation and is, for all purposes, an agent of the Crown.

3(4) Subject to this Act, the Corporation has the capacity, rights, powers and privileges of a natural person.

3(5) The Corporation has the capacity to carry on its business, conduct its affairs and exercise its powers outside the Province.

3(6) The *Business Corporations Act* does not apply to the Corporation.

3(7) The head office of the Corporation shall be at The City of Fredericton.

Effect of amalgamation

4 On the commencement of subsection 3(1),

(a) the shares of the amalgamating corporations with share capital, other than the Class A common share of the New Brunswick Power Holding Corporation, are cancelled without any repayment of capital in respect of those shares,

- (b) the Class A common share of the New Brunswick Power Holding Corporation held by the Crown, as represented by the Minister, is changed into one common share in the capital of the Corporation,
- (c) the property of each amalgamating corporation continues to be the property of the Corporation,
- (d) the Corporation continues to be liable for the obligations of each amalgamating corporation,
- (e) subject to paragraph (f), an existing cause of action, claim or liability to prosecution by or against an amalgamating corporation is unaffected,
- (f) a civil, criminal or administrative action or proceeding pending by or against an amalgamating corporation may continue to be prosecuted by or against the Corporation,
- (g) a conviction against, or ruling, order or judgment in favour of or against an amalgamating corporation may be enforced by or against the Corporation, and
- (h) in any document it is sufficient to cite this Act as effecting the amalgamation of the amalgamating corporations.

Real property

5(1) The following definitions apply in this section.

“approved parcel identifier ” means an approved parcel identifier as defined in the *Land Titles Act*. (*numéro d’identification approuvé*)

“Chief Registrar of Deeds” means the Chief Registrar of Deeds appointed under the *Registry Act*. (*conservateur en chef des titres de propriété*)

“instrument record” means instrument record as defined in the *Land Titles Act*. (*registre des instruments*)

“land titles office” means a land titles office as defined in the *Land Titles Act*. (*bureau d’enregistrement foncier*)

“register” (*enregistrer*)

(a) in paragraph (5)(a), means register as defined in the *Land Titles Act*, and

(b) in paragraph (5)(b), means register within the meaning of the *Registry Act*.

“registered land” means registered land as defined in the *Land Titles Act*. (*bien-fonds enregistré*)

“registered owner” means registered owner as defined in the *Land Titles Act*. (*propriétaire enregistré*)

“registrar” (*registrator*)

(a) in paragraph (5)(a), means registrar as defined in the *Land Titles Act*, and

(b) in paragraph (5)(b), means registrar as defined in the *Registry Act*.

“Registrar General” means the Registrar General as defined in the *Land Titles Act*.

(*registrator général*)

5(2) Without delay after the amalgamation under subsection 3(1), the Corporation shall file a notice in a land titles office for the District of New Brunswick and in the registry office established under the *Registry Act* for each county in the Province that indicates

(a) that the amalgamating corporations have been amalgamated, and

(b) that all title and interests in real property held in the name of each of the amalgamating corporations immediately before the amalgamation under subsection 3(1) are now held in the name of the Corporation.

5(3) The notice referred to in subsection (2) shall be deemed to be an instrument for the purposes of the *Land Titles Act* and the *Registry Act*.

5(4) The notice referred to in subsection (2) shall be in a form acceptable to the Registrar General and the Chief Registrar of Deeds.

5(5) On receipt of the notice referred to in subsection (2),

(a) the registrar shall, despite section 18 of the *Land Titles Act* and despite any failure of the Corporation to comply with any provision of the *Land Titles Act* or any regulation under that Act,

(i) identify all the approved parcel identifiers associated with registered land with respect to which any of the amalgamating corporations was the registered owner or held a registered leasehold interest immediately before the amalgamation under subsection 3(1),

(ii) assign a registration number, date and time to the notice and enter a record of the notice, date, time and number in the instrument record,

(iii) enter a record of the acceptance of the notice for registration in the instrument record,

(iv) register the notice in respect of the registered land represented by the approved parcel identifiers referred to in subparagraph (i), and

(v) issue new certificates of registered ownership to the Corporation in respect of all registered land with respect to which it is the registered owner or holds a registered leasehold interest, and

(b) despite any failure of the Corporation to comply with any provision of the *Registry Act* or any regulation under that Act, the registrar for each county in the Province shall register the notice.

5(6) Section 55 of the *Land Titles Act* and section 44 of the *Registry Act* do not apply to the registration of the notice referred to in subsection (2).

5(7) No claim shall be made and no action or other proceeding lies or shall be instituted against the Minister, the Crown or the Corporation by reason of any prejudice suffered as a result of any delay in filing a notice under subsection (2).

Shares and other securities

6(1) The authorized capital of the Corporation consists of an unlimited number of common shares without nominal or par value.

6(2) The Corporation may, by by-law,

(a) subdivide its shares, or any of them, into one or more classes, fix the number of shares in each class and determine that, as between the holders of the shares resulting from the subdivision, one or more of the shares shall have some preference or special advantage as regards dividend, capital, voting or otherwise, over, or as compared with, the others or other, or
(b) convert any part of its issued or unissued share capital into preferred shares redeemable or purchasable by the Corporation.

6(3) No person shall transfer any notes, bonds, debentures or other securities of the Corporation, other than non-convertible debt securities, without the approval of the Lieutenant-Governor in Council.

6(4) Subject to the rights, privileges, restrictions and conditions attaching to a class of shares and subject to subsection 36(6), the Corporation may purchase or otherwise acquire shares issued by it.

6(5) The Corporation may issue certificates in any form approved by the board of directors of the Corporation to evidence any shares or other securities issued by the Corporation.

Continuation of employment

7(1) On the commencement of subsection 3(1), the employment of an employee of any of the amalgamating corporations continues with the Corporation.

7(2) The employment of an employee referred to in subsection (1) shall be deemed to have continued with the Corporation without interruption in service, and the rights, duties and obligations of the employer and employee continue accordingly, with any modifications that are necessary.

7(3) An employee whose employment is continued under subsection (1) shall be deemed not to have been dismissed, constructively dismissed or laid-off.

7(4) If the employment of an employee is continued under subsection (1), nothing in this Act
(a) prevents the employment from being lawfully terminated after the continuation, or

(b) prevents any term or condition of the employment from being lawfully changed after the continuation.

7(5) Service of an employee referred to in subsection (1) with an amalgamating corporation or a predecessor of an amalgamating corporation is deemed to be service with the Corporation for the purpose of determining probationary periods, benefits or any other employment-related entitlements under the *Employment Standards Act* or any other Act, at common law or under any applicable contract of employment or collective agreement.

Deemed certification of bargaining agent

8(1) On the commencement of subsection 3(1), Local 37 of the International Brotherhood of Electrical Workers shall be deemed to have been certified by the Labour and Employment Board, pursuant to the *Public Service Labour Relations Act*, as the bargaining agent of each of the bargaining units of the employees who are included in a bargaining unit and whose employment is continued under subsection 7(1), and that bargaining agent has the same rights, duties and obligations that existed before the continuation.

8(2) Subsection (1) ceases to have effect on the date of the issuance of the certification order or orders under paragraph 10(2)(c) by the Labour and Employment Board.

Deemed application of collective agreement

9(1) Any collective agreement that is applicable to an amalgamating corporation and any of its employees and to Local 37 of the International Brotherhood of Electrical Workers immediately before the commencement of subsection 3(1) shall be deemed to apply as if entered into directly between the Corporation and Local 37 of the International Brotherhood of Electrical Workers, and the rights, duties and obligations of the employer, the bargaining agent and the employees continue accordingly, with any modifications that are necessary.

9(2) Subsection (1) ceases to have effect on the date of the making of a declaration by the Labour and Employment Board under paragraph 10(2)(d).

Hearing before the Labour and Employment Board

10(1) Within 30 days after the commencement of subsection 3(1), Local 37 of the International Brotherhood of Electrical Workers and the Corporation, or either of them, shall give written notice to the Labour and Employment Board of the date of the continuation of the employment of the employees referred to in subsection 7(1).

10(2) Despite that Local 37 of the International Brotherhood of Electrical Workers has been deemed under subsection 8(1) to be certified as the bargaining agent for the bargaining units of

the employees referred to in subsection 7(1) who are included in a bargaining unit, the Labour and Employment Board shall

(a) within 120 days after the commencement of subsection 3(1), commence a hearing under the *Public Service Labour Relations Act*,

(b) identify the appropriate bargaining units for the employees of the Corporation who are covered by the deeming provision under subsection 8(1),

(c) issue a certification order or orders for Local 37 of the International Brotherhood of Electrical Workers in respect of the employees of the Corporation who are in the appropriate bargaining units identified under paragraph (b), and

(d) declare that the collective agreements entered into by any of the amalgamating corporations are and continue to be binding on the Corporation as if entered into directly between it and Local 37 of the International Brotherhood of Electrical Workers with the rights, duties and obligations of the employer, the bargaining agent and the employees continuing under the collective agreement to the extent determined by the Labour and Employment Board.

10(3) A hearing referred to in paragraph (2)(a) and a hearing referred to in paragraph 60(2)(a) may be held at the same time or separately, as determined by the Labour and Employment Board.

10(4) The Labour and Employment Board possesses all the powers and jurisdiction necessary to give effect to this section.

Certain rights not affected

11 The amalgamation under subsection 3(1) or the continuation of the employment of employees under subsection 7(1)

(a) shall be deemed not to constitute

(i) a breach, termination, repudiation or frustration of any contract, including a contract of employment or insurance,

(ii) a breach of any Act, regulation or municipal or rural community by-law, or

(iii) an event of default or force majeure under any contract,

(b) shall be deemed not to give rise to a breach, termination, repudiation or frustration of any licence, permit or other right,

(c) shall be deemed not to give rise to any right to terminate or repudiate a contract, licence, permit or other right, and

(d) shall be deemed not to give rise to any estoppel.

Proceedings barred

12(1) No action or other proceeding lies or shall be instituted against the Minister, the Crown or the Corporation, or any employee or agent of any of them, as a direct or indirect result of the amalgamation under subsection 3(1) or any regulations, orders-in-council, directives, orders or decisions made under the authority of this Act in relation to the amalgamation under subsection 3(1).

12(2) Nothing in this Act creates a cause of action in favour of

(a) a holder of a security that was issued by any of the amalgamating corporations or any of their predecessors, or

(b) a party to a contract with an amalgamating corporation or any of its predecessors that was entered into before the commencement of this section.

Liability of Crown

13(1) The liability of the Crown as guarantor of a security or other liability of any of the amalgamating corporations or any of their predecessors pursuant to a written guarantee given by the Crown before the commencement of this section is not affected by anything in this Act.

13(2) The liability of the Crown as principal of any of the amalgamating corporations or any of their predecessors with respect to liabilities and obligations entered into by any of the amalgamating corporations or any of their predecessors on behalf of the Crown before the commencement of this section is not affected by anything in this Act.

Exemptions from other Acts

14 Any Acts or provisions of Acts that are prescribed by the regulations do not apply to the amalgamation under subsection 3(1) or to the continuation of the employment of employees under subsection 7(1).

Division B

Board of directors, officers and employees

Board of directors

15(1) The board of directors of the Corporation shall administer the business and affairs of the Corporation on a commercial basis, taking into consideration government policy.

15(2) The board of directors of the Corporation shall be composed of

(a) the President and Chief Executive Officer, who shall be a non-voting member of the board of directors, and

(b) not more than 14 directors appointed by the Lieutenant-Governor in Council.

15(3) The directors referred to in paragraph (2)(b) shall be appointed for a term not exceeding five years.

15(4) Despite subsection (3), a director referred to in paragraph (2)(b) shall hold office at the pleasure of the Lieutenant-Governor in Council.

15(5) A director referred to in paragraph (2)(b) shall be appointed from among those persons nominated by the board of directors of the Corporation in accordance with subsection (7).

15(6) Before making nominations under this section, the board of directors of the Corporation shall advise the Lieutenant-Governor in Council of

(a) the skills and qualifications required of the board of directors as a whole in order for the board to carry out its functions, and

(b) the skills and qualification requirements for nominees for the board of directors position or positions to be filled.

15(7) In making nominations under this section, the board of directors of the Corporation shall

(a) use a merit-based and objective approach,

(b) ensure that the board of directors as a whole has the necessary skills and qualifications to carry out its functions,

(c) provide to the Lieutenant-Governor in Council a description of the recruitment, assessment and selection processes used and the results of those processes, and

(d) comply with any regulations made under paragraph 142(1)(b).

15(8) A director referred to in paragraph (2)(b) may be reappointed for a second or subsequent term of office not exceeding five years, but subsection (5) does not apply to a director who is reappointed before or immediately after the expiry of his or her previous term.

15(9) Despite subsections (3) and (8) and subject to subsection (4), a director referred to in paragraph (2)(b) shall remain in office until the director resigns or is reappointed or replaced.

15(10) The resignation of a director becomes effective at the time a written resignation is received by the Corporation, or at the time specified in the resignation, whichever is later.

15(11) A vacancy on the board of directors of the Corporation does not impair the capacity of the board to act as long as a quorum is maintained.

Chair and Vice-Chair

16(1) The Lieutenant-Governor in Council shall appoint from among the directors referred to in paragraph 15(2)(b) a Chair and a Vice-Chair.

16(2) A Chair or Vice-Chair shall hold office as such for a term to be fixed by the Lieutenant-Governor in Council and may be reappointed as Chair or Vice-Chair for a second or subsequent term of office.

16(3) Subject to subsection (4), the Chair, or in his or her absence, the Vice-Chair, shall preside at meetings of the board of directors of the Corporation.

16(4) If the Chair and Vice-Chair are absent from a meeting of the board of directors of the Corporation, the directors present may elect from among themselves a person to preside at the meeting.

16(5) In the case of a temporary absence or inability to act of the Chair or Vice-Chair, the Lieutenant-Governor in Council may appoint from among the directors referred to in paragraph **15(2)(b)** a substitute for the Chair or Vice-Chair for the period of the temporary absence or inability to act.

16(6) Despite subsection (2), if the Chair or Vice-Chair ceases to be a director of the Corporation, he or she ceases to be the Chair or Vice-Chair, as the case may be.

16(7) Despite subsection (2), but subject to subsection (6), the Chair or Vice-Chair shall remain in that office until he or she resigns or is reappointed or replaced.

16(8) The resignation of the Chair or Vice-Chair becomes effective at the time a written resignation is received by the Corporation, or at the time specified in the resignation, whichever is later.

Quorum

17 A majority of the directors of the Corporation constitutes a quorum.

Meeting of the board of directors

18(1) The meetings of the board of directors of the Corporation shall be held in the Province on such notice as is required by the by-laws of the Corporation.

18(2) A director may in any manner waive notice of a meeting of the board of directors and attendance of a director at a meeting of the board of directors is a waiver of notice of the meeting, except if a director attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting was not lawfully called.

18(3) A director may participate in a meeting of the board of directors or of a committee of the board of directors by means of telephone or other communication facilities that permit all persons participating in the meeting to hear each other, and a director participating in such a

meeting by those means shall be deemed for the purposes of this Act to be present at that meeting.

Resolution in lieu of meeting

19(1) A resolution in writing signed by all directors of the Corporation entitled to vote on that resolution at a meeting of its board of directors or a committee of its board of directors is as valid as if it had been passed at a meeting of the board or committee duly called, constituted and held.

19(2) If counterparts of a resolution in writing have been signed by all the directors entitled to vote on that resolution at a meeting of the board of directors or committee of the board of directors, the resolution is as valid as if it had been passed at a meeting of the board or committee duly called, constituted and held.

19(3) Every signed resolution or counterpart referred to in this section shall be kept with the minutes of the proceedings of the board of directors or committee of the board of directors.

Dissent by directors

20(1) A director who is present at a meeting of the board of directors of the Corporation or of a committee of the board of directors shall be deemed to have consented to any resolution passed or action taken at the meeting unless

(a) the director requests that his or her dissent be, or his or her dissent is, entered in the minutes of the meeting,

(b) the director sends the director's written dissent to the secretary of the meeting before the meeting is adjourned, or

(c) the director sends the director's dissent by registered mail or delivers it to the head office of the Corporation immediately after the meeting is adjourned.

20(2) A director who votes for or consents to a resolution is not entitled to dissent under subsection (1).

Remuneration

21 The Chair and the Vice-Chair and the other directors of the Corporation shall be paid the remuneration that the Lieutenant-Governor in Council determines, and the payment shall be made out of the funds of the Corporation.

By-laws

22(1) In addition to any other by-laws authorized or required to be made under this Act and subject to this Act, the Corporation may, with the approval of the Lieutenant-Governor in

Council, make by-laws for the control and management of the Corporation's affairs, including, but not limited to, by-laws

(a) respecting the appointment of officers of the Corporation and prescribing the powers and duties of the President and Chief Executive Officer, any other officers of the Corporation or the Chair or Vice-Chair,

(b) authorizing the board of directors of the Corporation to establish committees of the board of directors, to determine the composition and operation of the committees and to delegate any powers or duties of the board of directors to the committees, and

(c) respecting the holding of meetings of the board of directors or of a committee referred to in paragraph (b) and the procedure at the meetings.

22(2) The *Regulations Act* does not apply to by-laws made by the Corporation.

President and Chief Executive Officer

23(1) The Lieutenant-Governor in Council shall appoint a President and Chief Executive Officer for a term not exceeding five years.

23(2) The President and Chief Executive Officer shall be appointed from among those persons nominated by the board of directors of the Corporation in accordance with subsection (7).

23(3) The President and Chief Executive Officer is, subject to the direction of the board of directors of the Corporation, charged with the general direction, supervision and control of the business of the Corporation and may exercise any other powers and duties conferred on him or her by the by-laws of the Corporation or by this Act.

23(4) The President and Chief Executive Officer shall be paid the remuneration that the Lieutenant-Governor in Council determines, and the payment shall be made out of the funds of the Corporation.

23(5) In determining the remuneration of the President and Chief Executive Officer, the Lieutenant-Governor in Council shall consider any recommendation made by the board of directors of the Corporation.

23(6) Before making nominations under this section, the board of directors of the Corporation shall advise the Lieutenant-Governor in Council of the skills and qualification requirements for nominees for the position of President and Chief Executive Officer.

23(7) In making nominations under this section, the board of directors of the Corporation shall (a) use a merit-based and objective approach,

(b) ensure that nominees have the necessary skills and qualifications to hold the office of President and Chief Executive Officer,

(c) provide to the Lieutenant-Governor in Council a description of the recruitment, assessment and selection processes used and the results of those processes, and

(d) comply with any regulations made under paragraph 142(1)(b).

23(8) A President and Chief Executive Officer may be reappointed for a second or subsequent term of office not exceeding five years, but subsection (2) does not apply to a President and Chief Executive Officer who is reappointed before or immediately after the expiry of his or her previous term.

23(9) In the case of a temporary absence or inability to act of the President and Chief Executive Officer, the board of directors of the Corporation may, despite anything else in this section, appoint a substitute for him or her for the period of the temporary absence or inability to act.

23(10) On the recommendation of the board of directors of the Corporation, the Lieutenant-Governor in Council may remove the President and Chief Executive Officer from office in accordance with a contract of employment between the Corporation and him or her or in accordance with applicable law.

23(11) Despite subsection (10), the Lieutenant-Governor in Council may remove the President and Chief Executive Officer from office in the circumstances set out in the regulations.

23(12) If the President and Chief Executive Officer is removed under subsection (10) or (11), the board of directors of the Corporation may, despite anything else in this section, appoint a substitute for him or her to hold office until a new President and Chief Executive Officer is appointed under this section.

23(13) Despite subsections (1) and (8) and subject to subsections (10) and (11), the President and Chief Executive Officer shall remain in office until he or she resigns or is reappointed or replaced.

23(14) The resignation of the President and Chief Executive Officer becomes effective at the time a written resignation is received by the Corporation, or at the time specified in the resignation, whichever is later.

Policy regarding staffing

24 The Corporation shall adopt a policy regarding staff requirements and the mode of appointment of its employees.

Duty of care of directors and officers

25(1) Every director and officer of the Corporation in exercising his or her powers and discharging his or her duties shall

(a) act honestly and in good faith in the best interests of the Corporation, and

(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances in the best interests of the Corporation.

25(2) Every director and officer of the Corporation shall comply with this Act, the regulations and the by-laws of the Corporation.

25(3) A director or officer of the Corporation who exercises his or her powers or discharges his or her duties in accordance with this Act, the regulations or the by-laws of the Corporation shall be deemed to act in the best interests of the Corporation.

Immunity

26(1) No action or other proceeding lies or shall be instituted against a director, officer or employee of the Corporation or of a subsidiary of the Corporation or against a former director, officer or employee of the Corporation, of a subsidiary of the Corporation or of an amalgamating corporation for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under this Act or the regulations or for any neglect or default in the exercise or performance in good faith of such a power or duty.

26(2) Subsection (1) does not relieve the Corporation, a subsidiary of the Corporation or an amalgamating corporation of any liability to which it would otherwise be subject in respect of a cause of action arising from any act, neglect or default referred to in subsection (1).

Indemnification

27(1) The Corporation may indemnify a director or officer of the Corporation or of a subsidiary of the Corporation against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by the individual in respect of any civil, criminal, administrative, investigative or other proceeding in which the individual is involved because of that association with the Corporation or subsidiary of the Corporation.

27(2) The Corporation may advance money to an individual referred to in subsection (1) for the costs, charges and expenses of a proceeding referred to in that subsection, and the individual shall repay the money if it is determined by a court or other competent authority that the individual does not fulfil the conditions of subsection (3).

27(3) The Corporation may not indemnify an individual under subsection (1) unless

(a) the individual acted honestly and in good faith with a view to the best interests of the Corporation or of the subsidiary of the Corporation, as the case may be, and
(b) in the case of a criminal or administrative action or proceeding that is enforced by a financial penalty, the individual had reasonable grounds for believing that the individual's conduct was lawful.

27(4) Despite subsection (1), an individual referred to in that subsection is entitled to indemnity from the Corporation in respect of all costs, charges and expenses reasonably incurred by the individual in connection with the defence of any civil, criminal, administrative, investigative or other proceeding to which the individual is subject because of the individual's association with the Corporation or a subsidiary of the Corporation, if the individual seeking indemnity

(a) was not judged by a court or other competent authority to have committed any fault or to have omitted to do anything that the individual ought to have done, and

(b) fulfils the conditions set out in subsection (3).

27(5) The Corporation may purchase and maintain insurance for the benefit of an individual referred to in subsection (1) against any liability incurred by the individual as a director or officer of the Corporation or of a subsidiary of the Corporation.

Division C

Powers

Definitions

28 The following definitions apply in this Division.

“compulsory power” includes the taking of any land or other property, or any interest in either, and the entering upon, flooding or overflowing of land, without the consent of the owner.

(pouvoir coercitif)

“owner” includes any person holding a right or an interest in, to, over or affecting land or other property. *(propriétaire)*

“shareholders' agreement” means *(convention d'actionnaires)*

(a) if a corporation has more than one shareholder, a written agreement among all the shareholders of that corporation that restricts, in whole or in part, the powers of its directors to manage the business and affairs of the corporation, or

(b) if a corporation has only one shareholder, a written declaration of that shareholder that restricts, in whole or in part, the powers of the corporation's directors to manage the business and affairs of the corporation.

Expropriation

29(1) Without limiting the generality of subsection 3(4), the Corporation has the power

(a) to construct, maintain and operate works on any public land, public highway, public street or public place or any watercourse, bridge, viaduct or railway, and with or without the consent of the owner, to flood and overflow any land and do anything it considers necessary for the purpose of providing storage of water or for any other purpose in connection with the works, without complying with any of the requirements of this Act for the taking of land without the consent of the owner,

(b) to put down, carry, construct, erect and maintain any conduits, wires, poles, towers and equipment and other works, used in the generation, transmission and distribution of electricity, that it considers necessary or appropriate, under, along, across or on any public street or highway and to remove or replace them without complying with any of the requirements of this Act for the taking of land without the consent of the owner, and

(c) without the consent of the owner, to take and expropriate any of the following:

(i) land, water, water power, water privilege and works, developed, operated, used or adapted for generating electricity, by any means from any source of power, and for transmitting the electricity;

(ii) land on which any water power or water privilege is situated, for the purpose of providing water power;

(iii) land and any watercourse or body of water that the Corporation considers is capable of improvement or development, for the purpose of providing water power;

(iv) land that the Corporation considers necessary for the full enjoyment and exercise of any water power, water privilege or works of the Corporation; or

(v) property and property rights of every description, including riparian rights, that the Corporation considers useful for the purpose of generating, transmitting or distributing electricity or restoring or remediating the physical environment.

29(2) Despite the powers conferred on the Corporation by this section and subject to subsection (3), if any public land, public highway, public street, public place, bridge, viaduct or railway referred to in paragraph (1)(a) or (b) is under the administration and control of the Minister of Transportation and Infrastructure, the Corporation shall not exercise any of the powers set out in those paragraphs with respect to any works or part of them unless

(a) the Corporation is maintaining, operating, inspecting or repairing existing works or any part of them, and has provided notice to the Minister of Transportation and Infrastructure before doing so, or

(b) in any other case, the Corporation has first made a report of the nature of the proposed works and their possible effect and provided plans of the proposed works or part of them to the Minister of Transportation and Infrastructure, and that Minister has given his or her written consent to the construction, putting down, carrying or erection of the works or part of them.

29(3) If any public land, public highway, public street, public place, bridge, viaduct or railway referred to in paragraph (1)(a) or (b) is under the administration and control of

(a) the New Brunswick Highway Corporation, any reference in subsection (2) to the Minister of Transportation and Infrastructure shall be read as a reference to the New Brunswick Highway Corporation, and that subsection applies with any other necessary modifications, or

(b) a project company as defined in the *New Brunswick Highway Corporation Act*, any reference in subsection (2) to the Minister of Transportation and Infrastructure shall be read as a reference to that project company, and that subsection applies with any other necessary modifications.

29(4) The location of any conduits, wires, poles, towers, equipment or works to be put down, carried, constructed or erected under paragraph (1)(b) shall be agreed on by the Corporation and the municipality or other authority having control of the public street or highway, and, in the case of disagreement, shall be determined by the Lieutenant-Governor in Council.

29(5) This section is subject to any agreement in effect between the Corporation and the Department of Transportation and Infrastructure, the New Brunswick Highway Corporation or a project company as defined in the *New Brunswick Highway Corporation Act*.

Expropriation - land

30 If land is proposed to be taken for the use of the Corporation as authorized under paragraph 29(1)(c), the procedure followed shall be that set out in the *Expropriation Act*.

Expropriation - property other than land

31(1) If property, other than land, is proposed to be taken for the use of the Corporation as authorized under paragraph 29(1)(c), a notice, which has been signed by the Chair or the President and Chief Executive Officer, shall be served or published in accordance with subsection (6).

31(2) The notice referred to in subsection (1) shall

(a) describe the property taken and any limitation in the interest taken in the property,

(b) identify the owner of the property, if known, and

(c) state that the Corporation will pay compensation in regard to the taking of the property.

31(3) Subject to subsection (5), the property vests in the Corporation on the expiry of the 30-day period referred to in subsection (6) unless, within that period, the Corporation personally serves the notice referred to in subsection (1) on the owner of the property, in which case the property vests in the Corporation at the time of the service of the notice.

31(4) Despite subsection (3) and subject to subsection (5), if the Chair or the President and Chief Executive Officer certifies on the notice signed under subsection (1) that the property is being taken as a result of an emergency, the property vests in the Corporation at the time of the certification.

31(5) If the notice referred to in subsection (1) indicates by appropriate words that the property other than land is taken for a limited time only, or that only a limited estate, right or interest in the property is taken, the right to possession for the limited time, or the limited estate, right or interest, vests in the Corporation at the time determined under subsection (3) or (4), as the case may be.

31(6) Within 30 days after the signing of the notice under subsection (1), the Corporation shall serve the notice personally on the owner of the property or, in the event that the owner is unknown or cannot be served after reasonable efforts have been made, shall cause the notice to be published once a week for three consecutive weeks, and at least once during the 30 days, in a newspaper having a general circulation in the county in which the property is situated.

31(7) The vesting of property under this section is not affected by an omission or error in the notice referred to in subsection (1) unless the omission or error is seriously misleading.

Immediate use of property expropriated

32(1) When property vests in the Corporation under section 31, the Corporation may immediately take possession of and use the property, despite that the amount of compensation has neither been agreed on nor determined.

32(2) The right to enter, take possession of, use and enjoy land that has been expropriated by the Corporation shall be determined in accordance with the *Expropriation Act*.

Compensation for expropriation

33(1) The Corporation shall make to the owner of property acquired by it or injuriously affected by the exercise of any of its compulsory powers conferred by this Act due compensation for the property acquired or for any damage resulting from the exercise of the powers.

33(2) If the Corporation and the owner cannot agree on the amount of compensation to be paid by the Corporation, the amount shall be determined in accordance with the *Expropriation Act*.

Easements

34(1) An easement in favour of the Corporation to use land for the purpose of transmitting or conducting electricity over transmission lines shall be deemed to also include an easement to use the land for the purpose of transmitting or conducting electricity over distribution lines.

34(2) Subsection (1) applies whether the easement was granted before or after the commencement of this section.

Fees payable

35 Nothing in this Division derogates from any obligation or requirement of the Corporation to pay any fee or charge imposed under any other Act or the regulations under any other Act.

Activities requiring approval of the Lieutenant-Governor in Council

36(1) The Corporation shall not, without the approval of the Lieutenant-Governor in Council, do any of the following:

(a) borrow sums of money;

(b) issue notes, bonds, debentures or other securities;

(c) incorporate a subsidiary;

(d) designate, by resolution of the Corporation's board of directors, a project company under subsection 37(1), or enter into an agreement with a project company under subsection 37(4);

(e) enter into partnerships or other similar arrangements for the sharing of profits with any other person;

(f) acquire or hold shares or other ownership interests in another entity;

(g) enter into, terminate or amend a shareholders' agreement in respect of a subsidiary of the Corporation;

(h) elect the board of directors of a subsidiary of the Corporation;

(i) make, alter or revoke any by-laws of the Corporation; or

(j) guarantee the obligations of any other person.

36(2) Despite paragraph (1)(f), the Corporation may acquire and hold for cash management purposes shares or other ownership interests issued by another entity as long as the Corporation does not hold more than ten percent of the issued and outstanding voting shares or interests of that other entity.

36(3) Paragraph (1)(f) does not apply to the holding by the Corporation of shares in the Marketing Corporation.

36(4) Paragraph (1)(h) does not apply to the election of the board of directors of the Marketing Corporation.

36(5) Paragraph (1)(j) does not apply to the guaranteeing of any obligation of the Marketing Corporation.

36(6) Except in the ordinary course of business of the Corporation, the Corporation shall not, as part of a transaction or series of related transactions, purchase, lease or otherwise acquire, or sell, exchange, lease or otherwise dispose of, an asset or assets with a value greater than \$50 million without the approval of the Lieutenant-Governor in Council.

36(7) A subsidiary of the Corporation shall not, without obtaining the approval of the Lieutenant-Governor in Council, carry on any activity that, if carried on by the Corporation directly, would require the approval of the Lieutenant-Governor in Council.

Project companies

37(1) In this section, “project company” means a corporation formed for the purpose of the refurbishment of existing works or the construction of new works and designated by resolution of the board of directors of the Corporation as a project company under this subsection.

37(2) A certified copy of any resolution made under subsection (1) shall be published in *The Royal Gazette* within 30 days after the approval of the resolution by the Lieutenant-Governor in Council, but failure to do so shall not affect the status of a project company.

37(3) A corporation designated under this section as a project company shall be a project company for all or any purposes of this Act or the regulations, subject to the limitations, terms, conditions and requirements set out in the resolution made under subsection (1).

37(4) The Corporation may enter into an agreement with a project company for the refurbishment of existing works or the construction of new works.

37(5) If the Corporation is given any power, authority, right, duty or responsibility under a provision of this Act or of the regulations that relates to the refurbishment of existing works or the construction of new works, that power, authority, right, duty or responsibility may be delegated by the Corporation to a project company in an agreement referred to in subsection (4), and the Corporation may, in the agreement,

(a) establish the terms and conditions under which the project company may exercise the delegated matter,

(b) subject the project company to any limitations, terms, conditions and requirements that are set out in the agreement, and

(c) authorize the project company to subdelegate to others the delegated matter, subject to any limitations, terms, conditions and requirements the project company considers appropriate.

37(6) Subject to subsection (7), a project company is not an agent of the Crown for any purpose.

37(7) The Corporation may declare in an agreement referred to in subsection (4) that the project company is acting as an agent of the Crown for, and only for, the purpose or purposes set out in the agreement.

37(8) Subject to subsection (9), no action or other proceeding lies or shall be instituted against the Corporation or the Crown in respect of any act or omission of a project company or its directors, officers, employees, trustees, partners, proprietors or members.

37(9) If, in accordance with subsection (7), the Corporation declares in an agreement that a project company is acting as an agent of the Crown for one or more purposes set out in the agreement, subsection (8) does not apply to any act or omission related to any of those purposes that is committed by the project company or one of its directors, officers, employees, trustees, partners, proprietors or members.

37(10) A project company may assign, sublease or sublicense, as security or for any other purpose, its powers, rights, duties, responsibilities and obligations under an agreement between it and the Corporation, in accordance with the agreement.

37(11) The revenues, investments and other assets of a project company do not form part of the Consolidated Fund, whether or not the project company has been declared to be an agent of the Crown under subsection (7).

37(12) Despite the *Crown Construction Contracts Act*, the *Public Purchasing Act* and the *Procurement Act* and the regulations under any of those Acts, those Acts and regulations do not apply to

(a) any contract between the Corporation and a project company,

(b) any contract between a project company and a person other than the Corporation that relates to a contract between the Corporation and the project company, and

(c) the purchase of supplies or services made by or other transactions carried out by a project company in relation to an agreement between the Corporation and the project company.

Dividends

38(1) The Corporation may declare or pay a dividend unless there are reasonable grounds for believing that

(a) the Corporation is, or would after the payment, be unable to pay its liabilities as they become due, or

(b) the realizable value of the Corporation's assets would thereby be less than the aggregate of its liabilities.

38(2) Any dividends payable to the Crown shall be paid to the Minister of Finance.

Division D

Financial Matters and Reporting

Fiscal year

39 The fiscal year of the Corporation ends on March 31 in each year.

Quarterly reports

40 The Corporation shall, within 60 days after each of the three-month periods ending June 30, September 30 and December 31 in each year, submit to the Minister a report, in the form that the Minister directs, on the operations of the Corporation and subsidiaries of the Corporation for the three-month period.

Appointment of auditor

41 The board of directors of the Corporation shall appoint, with the approval of the Lieutenant-Governor in Council, a qualified auditor to audit annually the accounts and financial statements of the Corporation.

Audited financial statements

42 The Corporation shall, within three months after the end of its fiscal year, submit to the Minister the audited financial statements of the Corporation for that fiscal year, and the Minister shall table the financial statements in the Legislative Assembly if it is then sitting or, if it is not then sitting, when it next sits.

Other reports

43 The Corporation shall submit any other reports and information to the Minister that the Minister requests from time to time.

Money raised for the Corporation and guarantees

44(1) The Lieutenant-Governor in Council may raise, by way of loan in the manner provided by the *Provincial Loans Act*, such sums as the Lieutenant-Governor in Council considers necessary for the benefit of the Corporation, and the sums so raised may either be advanced to the Corporation or applied by the Minister of Finance in the purchase of notes, bonds, debentures or other securities issued by the Corporation.

44(2) Subject to subsection (3), all advances made under subsection (1) to the Corporation shall be made on the terms and conditions agreed on between the Corporation and the Minister of Finance.

44(3) The Corporation shall reimburse the Minister of Finance for all charges and expenses incurred or to be incurred by the Minister of Finance in connection with the creation and issuance of any notes, bonds, debentures or other securities for the purpose of raising the money advanced.

44(4) The Lieutenant-Governor in Council may guarantee the obligations of the Corporation or any subsidiary of the Corporation on terms and conditions that the Lieutenant-Governor in Council considers appropriate and any such guarantee shall be valid despite subsection 3(3).

44(5) The Minister of Finance may, on behalf of the Crown, enter into agreements with the Corporation for the purposes of this section.

Sinking fund payment

45(1) The Corporation shall pay to the Minister of Finance such payments for sinking fund purposes as may be required by the terms of any notes, bonds, debentures or other securities issued by the Corporation, and the funds shall be retained and invested for the account of the Corporation and be used by the Corporation to make payment at the maturity of the notes, bonds, debentures or other securities.

45(2) Despite anything else contained in this Act,

(a) the Corporation may make other arrangements approved by the Lieutenant-Governor in Council

(i) for sinking fund payments by the Corporation to the Minister of Finance to be applied by the Corporation, before maturity, in repayment of the whole or any part of any securities to be issued by the Corporation, and

(ii) for the application by the Minister of Finance on behalf of the Corporation of the whole or any part of the sinking fund and any interest earnings on the fund to the purchase, and, in the case of securities issued subject to prior redemption in advance of maturity, to the redemption by call of the securities, and

(b) the Minister of Finance shall apply the sinking fund in accordance with an arrangement approved under paragraph (a).

Annual fees

46(1) The Corporation shall, in accordance with the regulations, pay annually to the Minister of Finance fees in respect of

(a) sums advanced or applied under subsection 44(1), and

(b) guarantees given by the Lieutenant-Governor in Council under subsection 44(4).

46(2) The fees referred to in subsection (1) apply to sums advanced or applied and to guarantees given before or after the commencement of this section.

Debt obligation

47(1) A condition contained in a debt obligation of the Corporation or in an instrument for securing a debt obligation of the Corporation is not invalid by reason only that the debt obligation is thereby made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long.

47(2) Debt obligations issued, pledged, hypothecated or deposited by the Corporation are not redeemed by reason only that the indebtedness evidenced by the debt obligations or in respect of which the debt obligations are issued, pledged, hypothecated or deposited is repaid.

47(3) Debt obligations issued by the Corporation and purchased, redeemed or otherwise acquired by it may be cancelled or, subject to any applicable trust indenture or other agreement, may be reissued, pledged or hypothecated to secure any obligation of the Corporation then existing or after that time incurred, and any such acquisition and reissue, pledge or hypothecation is not a cancellation of the debt obligations.

Division E

General

Absence of corporate seal

48 An instrument or agreement executed on behalf of the Corporation by a director, an officer or an agent of the Corporation is not invalid merely because a corporate seal is not affixed to the instrument or agreement.

Shareholder meetings

49(1) A resolution in writing signed by all the shareholders of the Corporation entitled to vote on that resolution at a meeting of shareholders is as valid as if it had been passed at a meeting of shareholders duly called, constituted and held.

49(2) If counterparts of a resolution in writing have been signed by all the shareholders entitled to vote on that resolution at a meeting of shareholders, the resolution is as valid as if it had been passed at a meeting of shareholders duly called, constituted and held.

49(3) Every signed resolution or counterpart referred to in this section shall be kept with the minutes of the proceedings of the shareholders' meetings.

49(4) A shareholder or any other person entitled to attend a meeting of shareholders may participate in the meeting by means of telephone or other communication facilities that permit all persons participating in the meeting to hear each other, and a person participating in such a meeting by those means shall be deemed for the purposes of this Act to be present at the meeting.

Limitations

50(1) If possession of land vested in the Corporation has been taken by another person, the right of the Corporation, or anyone claiming under the Corporation, to recover the land is not barred by reason of lapse of time, despite any other Act, or by reason of any claim based on possession adverse to the Corporation for any period of time that might otherwise be made lawfully at common law, unless it is shown that the Corporation, or a person from whom or through whom the Corporation has obtained possession of, or derives the right of possession of, the land, had actual notice in writing of the adverse possession, and the notice was received by the Corporation or that person 20 years before the Corporation or anyone claiming under the Corporation commenced an action to recover the land.

50(2) No claim under subsection (1) shall be acquired by possession, prescription, custom, use or implied grant to any way, easement, watercourse or use of water or water right or privilege of the Corporation, or to any way, easement, watercourse, or use of water, or right of drainage along, over, on or from any land, or water, or water right, or privilege of the Corporation, despite any other Act or any claim at common law based on lapse of time or length of enjoyment or use.

PART 3

NEW BRUNSWICK ENERGY MARKETING CORPORATION

New Brunswick Energy Marketing Corporation

51(1) The New Brunswick Power Generation Corporation, incorporated under the *Business Corporations Act* on February 5, 2004, shall, on the date of the commencement of this section, file articles of amendment under the *Business Corporations Act* changing its name to the New Brunswick Energy Marketing Corporation.

51(2) Despite any provision of the *Business Corporations Act*, on submission of the articles of amendment the Director shall accept the articles of amendment, and, on the date of commencement of this section, issue a certificate of amendment under the *Business*

Corporations Act changing the name of the New Brunswick Power Generation Corporation to the New Brunswick Energy Marketing Corporation.

51(3) A certificate of amendment referred to in subsection (2) shall be deemed to be effective immediately on the expiration of the day previous to its issuance and the articles shall be amended accordingly.

51(4) Without derogating from any powers or capacity of the New Brunswick Energy Marketing Corporation under the *Business Corporations Act*, the New Brunswick Energy Marketing Corporation has a mandate to carry out the business of importing and exporting energy.

Crown agent

52 The Marketing Corporation is a Crown corporation and is, for all purposes, an agent of the Crown.

Transfer and vesting

53(1) Subject to subsections (2) and (3), on the commencement of this section,

(a) the property of the Marketing Corporation is transferred to and becomes vested in the Corporation, and

(b) the claims, rights, liabilities, obligations and privileges of the Marketing Corporation are transferred to and become vested in the Corporation.

53(2) Paragraph (1)(a) does not apply to any property or any class of property prescribed by order of the Lieutenant-Governor in Council made within 30 days after the commencement of this section.

53(3) Paragraph (1)(b) does not apply to any claims, rights, liabilities, obligations and privileges or class of them prescribed by order of the Lieutenant-Governor in Council made within 30 days after the commencement of this section.

53(4) An order made under subsection (2) or (3) shall be retroactive to the date of the commencement of this section.

53(5) The *Regulations Act* does not apply to an order made under subsection (2) or (3).

53(6) The Minister shall, within 90 days after an order is made under subsection (2) or (3), publish the order in *The Royal Gazette*.

53(7) Failure to comply with subsection (6) does not affect the validity of an order made under subsection (2) or (3).

Effect of transfer and vesting

54 On the commencement of section 53,

- (a) subject to paragraph (b), an existing cause of action, claim or liability to prosecution is unaffected,
- (b) a civil, criminal or administrative action or proceeding pending by or against the Marketing Corporation under its former name of New Brunswick Power Generation Corporation may only be continued to be prosecuted by or against the Corporation except in relation to claims, rights, liabilities, obligations and privileges or classes of them referred to in subsection 53(3),
- (c) a conviction against, or ruling, order or judgment in favour of or against the Marketing Corporation under its former name of New Brunswick Power Generation Corporation may only be enforced by or against the Corporation except in relation to claims, rights, liabilities, obligations and privileges or classes of them referred to in subsection 53(3), and
- (d) in any document dealing with property transferred to and vested in the Corporation under paragraph 53(1)(a) or a claim, right, liability, obligation or privilege transferred to and vested in the Corporation under paragraph 53(1)(b), it is sufficient to cite this Act as effecting the transfer to and vesting in the Corporation of the property, claim, right, liability, obligation or privilege.

Transfer and vesting effective

55 The transfer and vesting effected under subsection 53(1) takes effect despite

- (a) any public or private Act or any rule of law, including an Act or rule of law that requires notice or registration of a transfer of property, or
- (b) the absence of any consent or approval that is or may be required for all or any part of the transfer and vesting.

Real property

56(1) The following definitions apply in this section.

“approved parcel identifier” means an approved parcel identifier as defined in the *Land Titles Act*. (*numéro d’identification approuvé*)

“Chief Registrar of Deeds” means the Chief Registrar of Deeds appointed under the *Registry Act*. (*conservateur en chef des titres de propriété*)

“instrument record” means instrument record as defined in the *Land Titles Act*. (*registre des instruments*)

“land titles office” means a land titles office as defined in the *Land Titles Act*. (*bureau d’enregistrement foncier*)

“register” (*enregistrer*)

- (a) in paragraph (5)(a), means register as defined in the *Land Titles Act*, and
- (b) in paragraph (5)(b), means register within the meaning of the *Registry Act*.

“registered land” means registered land as defined in the *Land Titles Act (bien-fonds enregistré)* .

“registrar” (*registrator*)

(a) in paragraph (5)(a), means registrar as defined in the *Land Titles Act*, and

(b) in paragraph (5)(b), means registrar as defined in the *Registry Act*.

“Registrar General” means the Registrar General as defined in the *Land Titles Act*.

(*registrator général*)

56(2) Without delay after the commencement of section 53, the Corporation shall file a notice in a land titles office for the District of New Brunswick and in the registry office established under the *Registry Act* for each county in the Province that indicates

(a) that the transfer and vesting effected under subsection 53(1) has taken place, and

(b) that all title and interests in real property transferred to and vested in the Corporation under subsection 53(1) are now held in the name of the Corporation.

56(3) The notice referred to in subsection (2) shall be deemed to be an instrument for the purposes of the *Land Titles Act* and the *Registry Act*.

56(4) The notice referred to in subsection (2) shall be in a form acceptable to the Registrar General and the Chief Registrar of Deeds.

56(5) On receipt of the notice referred to in subsection (2),

(a) the registrar shall, despite section 18 of the *Land Titles Act* and despite any failure of the Corporation to comply with any provision of the *Land Titles Act* or any regulation under that Act,

(i) identify all the approved parcel identifiers associated with registered land

(A) that is transferred to and vested in the Corporation under subsection 53(1), or

(B) in respect of which a registered leasehold interest is transferred to and vested in the Corporation under subsection 53(1),

(ii) assign a registration number, date and time to the notice and enter a record of the notice, date, time and number in the instrument record,

(iii) enter a record of the acceptance of the notice for registration in the instrument record,

(iv) register the notice in respect of the registered land represented by the approved parcel identifiers referred to in subparagraph (i), and

(v) issue new certificates of registered ownership to the Corporation in respect of

(A) all registered land that is transferred to and vested in the Corporation under subsection 53(1), and

(B) all registered land in respect of which a registered leasehold interest is transferred to and vested in the Corporation under subsection 53(1), and

(b) despite any failure of the Corporation to comply with any provision of the *Registry Act* or any regulation under that Act, the registrar for each county in the Province shall register the notice.

56(6) Section 55 of the *Land Titles Act* and section 44 of the *Registry Act* do not apply to the registration of the notice referred to in subsection (2).

56(7) No claim shall be made and no action or other proceeding lies or shall be instituted against the Marketing Corporation, the Minister, the Crown or the Corporation by reason of any prejudice suffered as a result of any delay in filing a notice under subsection (2).

Transfer of employees

57(1) On the commencement of this section, an employee of the Marketing Corporation is transferred to and becomes an employee of the Corporation.

57(2) An employee referred to in subsection (1) shall be deemed to have been transferred to the Corporation without interruption in service, and the rights, duties and obligations of the employer and employee continue accordingly, with any modifications that are necessary.

57(3) An employee who is transferred under subsection (1) shall be deemed not to have been dismissed, constructively dismissed or laid-off.

57(4) If an employee is transferred under subsection (1), nothing in this Act

(a) prevents the employment from being lawfully terminated after the transfer, or

(b) prevents any term or condition of the employment from being lawfully changed after the transfer.

57(5) Service of an employee referred to in subsection (1) with the Marketing Corporation under its former name of New Brunswick Power Generation Corporation or with any of its predecessors is deemed to be service with the Corporation for the purpose of determining probationary periods, benefits or any other employment-related entitlements under the *Employment Standards Act* or any other Act, at common law or under any applicable contract of employment or collective agreement.

Deemed certification of bargaining agent

58(1) On the commencement of this section, Local 37 of the International Brotherhood of Electrical Workers shall be deemed to have been certified by the Labour and Employment Board, pursuant to the *Public Service Labour Relations Act*, as the bargaining agent of each of the bargaining units of the employees transferred under subsection 57(1) who are included in a

bargaining unit, and that bargaining agent has the same rights, duties and obligations that existed before the transfer.

58(2) Subsection (1) ceases to have effect on the date of the issuance of the certification order or orders under paragraph **60(2)(c)** by the Labour and Employment Board.

Deemed application of collective agreement

59(1) Any collective agreement that is applicable to the New Brunswick Power Generation Corporation and any of its employees and to Local 37 of the International Brotherhood of Electrical Workers immediately before the commencement of this section shall be deemed to apply as if entered into directly between the Corporation and Local 37 of the International Brotherhood of Electrical Workers, and the rights, duties and obligations of the employer, the bargaining agent and the employees continue accordingly, with any modifications that are necessary.

59(2) Subsection (1) ceases to have effect on the date of the making of a declaration by the Labour and Employment Board under paragraph **60(2)(d)**.

Hearing before the Labour and Employment Board

60(1) Within 30 days after the commencement of this section, Local 37 of the International Brotherhood of Electrical Workers and the Corporation, or either of them, shall give written notice to the Labour and Employment Board of the date of the transfer of the employees referred to in subsection **57(1)**.

60(2) Despite that Local 37 of the International Brotherhood of Electrical Workers has been deemed under subsection **58(1)** to be certified as the bargaining agent for the bargaining units of the transferred employees referred to in subsection **57(1)** who are included in a bargaining unit, the Labour and Employment Board shall

(a) within 120 days after the commencement of this section, commence a hearing under the *Public Service Labour Relations Act*,

(b) identify the appropriate bargaining units for the employees of the Corporation who are covered by the deeming provision under subsection **58(1)**,

(c) issue a certification order or orders for Local 37 of the International Brotherhood of Electrical Workers in respect of the employees of the Corporation who are in the appropriate bargaining units identified under paragraph (b), and

(d) declare that the collective agreements entered into by the New Brunswick Power Generation Corporation are and continue to be binding on the Corporation as if entered into directly between

it and Local 37 of the International Brotherhood of Electrical Workers with the rights, duties and obligations of the employer, the bargaining agent and the employees continuing under the collective agreement to the extent determined by the Labour and Employment Board.

60(3) A hearing referred to in paragraph (2)(a) and a hearing referred to in paragraph 10(2)(a) may be held at the same time or separately, as determined by the Labour and Employment Board.

60(4) The Labour and Employment Board possesses all the powers and jurisdiction necessary to give effect to this section.

Certain rights not affected

61 The transfer and vesting effected under subsection 53(1) or the transfer of employees under subsection 57(1)

(a) shall be deemed not to constitute

(i) a breach, termination, repudiation or frustration of any contract, including a contract of employment or insurance,

(ii) a breach of any Act, regulation or municipal or rural community by-law, or

(iii) an event of default or force majeure under any contract,

(b) shall be deemed not to give rise to a breach, termination, repudiation or frustration of any licence, permit or other right,

(c) shall be deemed not to give rise to any right to terminate or repudiate a contract, licence, permit or other right, and

(d) shall be deemed not to give rise to any estoppel.

Proceedings barred

62(1) No action or other proceeding lies or shall be instituted against the Minister, the Crown, the Corporation or the Marketing Corporation, or any employee or agent of any of them, as a direct or indirect result of the transfer and vesting effected under subsection 53(1) or any regulations, orders-in-council, directives, orders or decisions made under the authority of this Act in relation to the transfer and vesting effected under subsection 53(1).

62(2) Nothing in this Act creates a cause of action in favour of

(a) a holder of a security that was issued by the Marketing Corporation, under its former name of New Brunswick Power Generation Corporation, or by any of its predecessors, or

(b) a party to a contract with the Marketing Corporation, under its former name of New Brunswick Power Generation Corporation, or with any of its predecessors that was entered into before the commencement of this section.

Liability of Crown

63(1) The liability of the Crown as guarantor of a security or other liability of the Marketing Corporation or any of its predecessors pursuant to a written guarantee given by the Crown before the commencement of this section is not affected by anything in this Act.

63(2) The liability of the Crown as principal of the Marketing Corporation or any of its predecessors with respect to liabilities and obligations entered into by it or any of its predecessors on behalf of the Crown before the commencement of this section is not affected by anything in this Act.

Exemptions from other Acts

64 Parts V and VI of the *Harmonized Sales Tax Act* and any other Acts or provisions of Acts that are prescribed by the regulations do not apply to the transfer to the Corporation and vesting in the Corporation of property, claims, rights, liabilities, obligations and privileges under subsection **53(1)** or to the transfer of employees under subsection **57(1)**.

Board of directors of the Marketing Corporation

65(1) The following definitions apply in this section.

“common-law partner” means a person who cohabits in a conjugal relationship with another person if the persons are not married to each other. (*conjoint de fait*)

“immediate family member” means the spouse, common-law partner, parent, child, grandparent, grandchild, brother or sister of a person, including the corresponding in-laws and step-relations of the person. (*membre de la famille immédiate*)

“independent director” means a member of the board of directors of the Marketing Corporation who has no direct or indirect material relationship with the Marketing Corporation or the Corporation. (*administrateur indépendant*)

“material relationship” means, subject to subsection (3), a relationship which could, in the view of the board of directors of the Marketing Corporation, be reasonably expected to interfere with the exercise of the independent judgment of a member of that board of directors. (*relation importante*)

65(2) The board of directors of the Marketing Corporation shall be composed of the President and Chief Executive Officer, who shall serve as its chair, and not more than two other directors, at least one of whom shall be an independent director.

65(3) For the purposes of this section, the following individuals shall be considered to have a material relationship with the Marketing Corporation or the Corporation:

(a) an individual who is, or has been within the last three years, an employee or officer of the Marketing Corporation or of the Corporation or a director of the Corporation;

(b) an individual whose immediate family member is, or has been within the last three years, an officer of the Marketing Corporation or of the Corporation or a director of the Corporation;

(c) an individual who accepts, directly or indirectly, any consulting, advisory or other compensatory fee from the Corporation or a subsidiary of the Corporation, other than as remuneration for acting in his or her capacity as a member of the board of directors of the Marketing Corporation or as a member of any committee of, or as chair or vice-chair of, the board of directors of the Marketing Corporation.

65(4) For the purposes of paragraph (3)(c), a compensatory fee does not include the receipt of fixed amounts of compensation under a retirement plan, including deferred compensation, for prior service with the Corporation or any subsidiary of the Corporation if the compensation is not contingent in any way on continued service.

Financial risk management policies

66(1) The Marketing Corporation is subject to the financial risk management policies established by the Corporation and approved by the Board.

66(2) A transaction entered into by the Marketing Corporation that is in compliance with the financial risk management policies approved by the Board shall be deemed to be prudent and reasonable.

Further change of name

67 If the Marketing Corporation changes its name by articles of amendment under the *Business Corporations Act*,

(a) any reference in this Act or the regulations to the Marketing Corporation or the New Brunswick Energy Marketing Corporation shall be read as a reference to that corporation by its name as changed pursuant to the articles of amendment, and

(b) any reference in any other Act or any regulation under any other Act to the New Brunswick Energy Marketing Corporation shall be read as a reference to that corporation by its name as changed pursuant to the articles of amendment.

PART 4

GOVERNMENT POLICY

Electricity policy of the government

68 It is declared to be the policy of the Government of New Brunswick

(a) that the rates charged by the Corporation for sales of electricity within the Province

(i) should be established on the basis of annually forecasted costs for the supply, transmission and distribution of the electricity, and

(ii) should provide sufficient revenue to the Corporation to permit it to earn a just and reasonable return, in the context of the Corporation's objective to earn sufficient income to achieve a capital structure of at least 20% equity,

(b) that all the Corporation's sources and facilities for the supply, transmission and distribution of electricity within the Province should be managed and operated in a manner that is consistent with reliable, safe and economically sustainable service and that will

(i) result in the most efficient supply, transmission and distribution of electricity,

(ii) result in consumers in the Province having equitable access to a secure supply of electricity, and

(iii) result in the lowest cost of service to consumers in the Province, and

(c) that, consistent with the policy objectives set out in paragraphs (a) and (b) and to the extent practicable, rates charged by the Corporation for sales of electricity within the Province shall be maintained as low as possible and changes in rates shall be stable and predictable from year to year.

Directives by the Executive Council

69 The Executive Council may at any time issue directives in writing to the Corporation that must be taken into consideration by the board of directors of the Corporation.

Policies of the Lieutenant-Governor in Council

70(1) The Lieutenant-Governor in Council may by regulation establish policies to be observed by the Board in the exercise of any jurisdiction or authority conferred on it under this Act or the regulations.

70(2) Subsection (1) shall be deemed not to authorize any regulation directed specifically to any matter or application before the Board.

PART 5

ELECTRICITY SECTOR

Division A

Reliability of the Integrated Electricity System

Integrated electricity system

71 In operating or directing the operation of the integrated electricity system, the Corporation

(a) shall enter into agreements with other transmitters giving the Corporation the authority to direct the operation of their transmission systems,

(b) shall maintain the adequacy and reliability of the integrated electricity system,

(c) may enter into interconnection agreements with owners or operators of transmission systems in other jurisdictions,

(d) may work with responsible authorities outside the Province to coordinate the Corporation's activities with their activities,

(e) may participate with any standards body in the development of standards and criteria relating to the reliability of transmission systems, and

(f) shall undertake planning to maintain and ensure the adequacy and reliability of the integrated electricity system for present and future needs.

Division B

Electricity Sales

Electricity sales

72(1) Subject to this section, no person, other than the Corporation, shall sell or supply electricity to a consumer or municipal distribution utility within the Province.

72(2) A municipal distribution utility may sell electricity to a consumer within the territorial limits in which that municipal distribution utility is entitled to extend its distribution of electricity under section 88.

72(3) A municipal distribution utility that, on April 1, 2013, was a purchaser under a contract to purchase electricity from a person other than the Corporation may continue to purchase electricity from that person under the contract and subsequent contracts for so long as that contractual relationship continues uninterrupted.

72(4) Subsection (3) applies, with any necessary modifications, with regard to any successor or assign of the person from whom the municipal distribution utility was a purchaser of electricity on April 1, 2013.

72(5) For the purposes of subsection (3), an instant of time between the end of the term of a contract and the beginning of the term of a subsequent contract does not constitute an interruption in the contractual relationship.

72(6) Nothing in this section prevents a municipal distribution utility from purchasing electricity if

(a) the electricity is generated within the territorial limits in which that municipal distribution utility is entitled to extend its distribution of electricity under section 88, and

(b) the electricity is purchased in accordance with that municipal distribution utility's policy regarding distributed generation or its policy regarding net metering.

Division C

Electricity Business Rules

Use of integrated electricity system

73 Except in accordance with the approved transmission tariff and the electricity business rules, no person shall convey, or cause to be conveyed, electricity or provide, or cause to be provided, ancillary services into, through or out of the integrated electricity system.

Electricity business rules

74(1) To the extent that they are not in conflict with the provisions of the approved transmission tariff, the Corporation may establish electricity business rules

(a) governing the integrated electricity system, and

(b) governing the relationships among the Corporation, other transmitters and users of the integrated electricity system within the context of the operation of the integrated electricity system and in respect of the administration of the approved transmission tariff.

74(2) Without limiting the generality of subsection (1), the electricity business rules may include provisions

(a) governing the making and publication of the electricity business rules,

(b) governing the manner in which terms and conditions of the approved transmission tariff apply,

(c) governing the disbursement of revenues collected and the sharing of expenses incurred in accordance with the approved transmission tariff,

- (d) governing the provision of ancillary services by suppliers,
- (e) facilitating the reliable operation of the integrated electricity system on a non-discriminatory basis, including, without limitation, with respect to transmission and generation outage planning, integrated electricity system planning, facility connection and facility operations,
- (f) governing standards and procedures to be observed in emergencies,
- (g) establishing minimum requirements for publication of integrated electricity system information, and
- (h) authorizing and governing the giving of directions and the making of orders or decisions by the Corporation for the purpose of maintaining the reliability of the integrated electricity system.

74(3) An electricity business rule may be general or particular in its application.

74(4) The *Regulations Act* does not apply to the electricity business rules or to any directions given or orders or decisions made under those rules.

74(5) The Corporation shall publish the electricity business rules in accordance with those rules and shall make the electricity business rules available for public inspection during normal business hours at the head office of the Corporation.

74(6) Despite subsections (1) and (5), until a date prescribed by regulation,

(a) the Minister, instead of the Corporation, may make the electricity business rules referred to in subsection (1),

(b) the Minister, instead of the Corporation, shall publish or cause to be published the electricity business rules, and

(c) sections 76 and 78 do not apply to the electricity business rules.

74(7) After the date prescribed by regulation for the purposes of subsection (6), the electricity business rules made by the Minister under paragraph (6)(a) continue in force until amended or replaced by the Corporation.

Waiver from electricity business rules

75(1) A person may apply to the Corporation for a waiver from the application of any provision of the electricity business rules.

75(2) The Corporation shall publish notice of the application and deal with the application in accordance with the electricity business rules.

75(3) The Corporation may grant a waiver applied for in whole or in part and may impose any terms and conditions on the waiver that the Corporation considers appropriate in the circumstances.

Amendments to electricity business rules

76(1) The Corporation shall, in accordance with the electricity business rules, publish any amendment to them at least 30 days before the amendment comes into force.

76(2) On application by any person, the Board shall review any amendment to the electricity business rules.

76(3) An application under this section shall be filed within 30 days after the amendment is published under subsection (1).

76(4) The Board may, on its own motion, review any amendment to the electricity business rules.

76(5) An application under this section or a review initiated by the Board under this section does not stay the operation of the amendment pending the completion of the review by the Board unless the Board orders otherwise.

76(6) In determining whether to stay the operation of an amendment, the Board shall consider

- (a) the public interest,
- (b) the merits of the application,
- (c) the possibility of irreparable harm to any person, and
- (d) the balance of convenience.

76(7) If, on completion of its review, the Board finds that the amendment is inconsistent with the provisions of this Act, conflicts with the approved transmission tariff or unjustly discriminates against or in favour of a person or group of persons, the Board shall make an order

- (a) revoking the amendment on a date specified by the Board, and
- (b) referring the amendment back to the Corporation for further consideration.

Urgent amendments

77(1) Section 76 does not apply if the Corporation files a statement with the Board indicating that, in its opinion, an amendment to the electricity business rules is urgently required for one or more of the following reasons:

- (a) to avoid, reduce the risk of or mitigate the effects of conditions that affect the ability of the integrated electricity system to function normally;
- (b) the electricity business rules conflict with this Act or the approved transmission tariff;
- (c) to avoid, reduce the risk of or mitigate the impact of an unintended adverse effect of an electricity business rule.

77(2) The Corporation shall publish the amendment in accordance with the electricity business rules at the same time as, or as soon as reasonably possible after, the statement referred to in subsection (1) is filed.

77(3) On application by any person, the Board shall review the amendment.

77(4) An application under this section shall be filed within 30 days after the amendment is published under subsection (2).

77(5) The Board may, on its own motion, review the amendment.

77(6) An application under this section or a review initiated by the Board under this section does not stay the operation of the amendment pending the completion of the review unless the Board orders otherwise.

77(7) If, on completion of its review, the Board finds that the amendment is inconsistent with the provisions of this Act, conflicts with the approved transmission tariff or unjustly discriminates against or in favour of a person or group of persons, the Board

(a) shall make an order referring the amendment back to the Corporation for further consideration, and

(b) may make an order revoking the amendment on a date specified by the Board.

Other review of electricity business rules

78(1) On application by any person or on its own motion, the Board may review any provision of the electricity business rules.

78(2) Subsection (1) does not apply to a provision of the electricity business rules that was reviewed by the Board under section 76 or 77 within 24 months before the application.

78(3) An application shall not be made under this section by a user of the integrated electricity system unless that user has followed the procedures under the electricity business rules relating to the review of those rules.

78(4) An application under this section or a review initiated by the Board under this section does not stay the operation of the provision pending the completion of the review.

78(5) If, on completion of its review, the Board finds that the provision is inconsistent with the provisions of this Act, conflicts with the approved transmission tariff or unjustly discriminates against or in favour of a person or group of persons, the Board shall make an order directing the Corporation to amend the electricity business rules in a manner and within the time period specified by the Board.

78(6) The Corporation shall, in accordance with the electricity business rules, publish any amendment made pursuant to an order under subsection (5).

78(7) Sections 76 and 77 do not apply to an amendment made pursuant to an order under subsection (5).

Appeal from orders or decisions of Corporation

79(1) A person who is subject to an order or decision made by the Corporation under the electricity business rules may appeal the order or decision to the Board if the order or decision is inconsistent with the provisions of this Act, conflicts with the approved transmission tariff or unjustly discriminates against or in favour of a person or group of persons.

79(2) A person who is adversely affected by the granting of a waiver by the Corporation under section 75, who objects to any term or condition of the waiver or who, having applied for a waiver, is refused the waiver, whether in whole or in part, may appeal the decision of the Corporation to the Board if the granting of the waiver, the term or condition of the waiver or the refusal to grant the waiver is inconsistent with the provisions of this Act, conflicts with the approved transmission tariff or unjustly discriminates against or in favour of a person or group of persons.

79(3) An appeal shall not be commenced under subsection (1) or (2) unless the person appealing has followed the dispute resolution procedures under the electricity business rules or the approved transmission tariff, as the case may be.

79(4) An appeal shall be filed within 21 days after the date of the making of the order or decision.

79(5) An appeal does not stay the operation of an order or decision pending the determination of the appeal unless the Board orders otherwise.

79(6) In determining whether to stay the operation of an order or decision, the Board shall consider

- (a) the public interest,
- (b) the merits of the appeal,
- (c) the possibility of irreparable harm to any person, and
- (d) the balance of convenience.

79(7) After considering the appeal, the Board may

- (a) dismiss the appeal,
- (b) revoke or amend the order or decision appealed from, or

(c) make any other order or decision that the Corporation could have made.

Information protected

80 A person appointed under the electricity business rules for the purpose of resolving or attempting to resolve a dispute between or among the Corporation, other transmitters and users of the integrated electricity system shall not be required in any civil proceeding to give testimony with respect to information obtained in the course of resolving or attempting to resolve the dispute.

Division D Transmitters

Limitation on transmission

81 No person, other than a transmitter, shall own or operate a transmission system within the Province.

No new transmission facilities

82(1) No person, other than the Corporation, shall construct any new facilities used to provide transmission service in the Province.

82(2) Nothing in this section shall be interpreted to prevent any transmitter from repairing, replacing or upgrading any of its existing transmission facilities.

82(3) No action or other proceeding lies or shall be instituted against the Crown, the Minister or the Corporation based on any cause of action arising out of the application of this section.

Obligation to provide transmission service

83 The Corporation shall, in accordance with the approved transmission tariff, expand or modify its transmission system in order to accommodate a request for transmission service.

Business arrangements

84 Despite section 81, the Corporation may, with the approval of the Lieutenant-Governor in Council, enter into partnerships, joint ventures or similar arrangements with any other person for the development of the Corporation's transmission system or any part of it.

Non-discriminatory access to transmission system

85 Each transmitter shall provide users of the integrated electricity system with open and non-discriminatory access to its transmission system in accordance with the electricity business rules and the approved transmission tariff.

Duties of transmitters other than the Corporation

86 A transmitter, other than the Corporation, shall not connect its transmission system to the transmission system of the Corporation and shall not recover its revenue requirements under the approved transmission tariff unless the transmitter

(a) provides any transmission system operating information to the Corporation that the Corporation requests,

(b) enters into an agreement with the Corporation under which it agrees to operate its transmission system under the direction of the Corporation, and

(c) complies with procedures established by the Corporation, and directions given and orders made by the Corporation, to ensure the adequacy and reliability of the transmitter's transmission system.

Division E

Distribution Electric Utilities

Limitation on distribution

87 No person, other than a distribution electric utility, shall own or operate a distribution system within the Province.

Municipal distribution utilities

88(1) The Power Commission of The City of Saint John shall not extend its distribution of electricity to any area beyond the territorial limits of The City of Saint John as described in subsection 7(2) of New Brunswick Regulation 85-6 under the *Municipalities Act* as that subsection existed on the commencement of this section.

88(2) The city of Edmundston shall not extend its distribution of electricity to any area beyond

(a) the territorial limits described in subsection 32(2) of the *Edmundston Act, 1998*, as that subsection existed on the commencement of this section, and

(b) the territorial limits of St Basile 10 (an Indian reserve under the *Indian Act (Canada)*).

88(3) The Perth-Andover Electric Light Commission shall not extend its distribution of electricity to any area beyond the territorial limits of the Village of Perth-Andover as described in subsection 83(2) of New Brunswick Regulation 85-6 under the *Municipalities Act* as that subsection existed on the commencement of this section.

Filing of distribution rates

89 A municipal distribution utility shall file its rates with the Board within 30 days after any change in its rates.

Allocation in emergencies

90(1) If the supply of electricity to a distribution electric utility is interrupted or reduced as a result of an emergency, supply shortage or a breakdown or repair of a transmission or distribution system, the distribution electric utility may allocate the available electricity among its customers.

90(2) An allocation of electricity under subsection (1) shall be deemed not to be a breach of any contract.

Obligation to extend electric service

91(1) Subject to section 88, a distribution electric utility shall extend its supply of electric service to any person without such service, if it appears to the utility that after service has been extended there will be a reasonable return to it on the capital invested in the whole undertaking of the utility.

91(2) A reasonable rate of return shall, in respect of a municipal distribution utility, be interpreted in accordance with requirements established under the *Municipalities Act*.

Termination of service

92 If any person supplied with electricity by a distribution electric utility fails to pay the amount due for the electricity within the period of one month after the amount becomes due, the distribution electric utility may stop the supply of electricity from entering the premises of the person by cutting off the supply wire or by any other means that it thinks fit and may, despite any contract to furnish for a longer period, recover the amount due from the person up to that time, together with the expense of cutting off the electricity, in any court of competent jurisdiction.

Limitation on liability

93 Any contract for the supply of electricity by a distribution electric utility shall be deemed to provide that the distribution electric utility shall not be liable for damages in respect of any abnormality, delay, interruption or other partial or complete failure in the supplying of the electricity when the damages are caused by circumstances that are beyond the ability of the distribution electric utility to control by reasonable and practicable effort.

Division F

Access and Property Rights

Power of entry

94(1) Subject to subsections (2) and (3), the Corporation or any other distribution electric utility or transmitter may, by its engineers, agents or employees, enter the land or premises of any person and, without the consent of the owner,

- (a) read any of its meters or construct, install, maintain, inspect, repair or remove any of its meters, equipment, installations or other works,
- (b) survey and take levels of the land or premises and run lines or make the borings, tests and sink the trial or test pits or holes it considers necessary for the purpose of using, constructing, maintaining, safeguarding or repairing its works,
- (c) cut down, trim or delimb any trees that might, in its opinion, in falling or in any other manner, endanger its conductors, wires, equipment or other works or that may obstruct the running of survey lines, or
- (d) make and use all temporary roads and related structures that are required by it for the convenient passing to and from its survey lines and works.

94(2) Subject to subsection (3), the Corporation or another distribution electric utility or transmitter shall not exercise any of the powers set out in subsection (1) with respect to any works or part of them situated on any public land, public highway, public street, public place, bridge, viaduct or railway that is under the administration and control of the Minister of Transportation and Infrastructure unless

- (a) the Corporation, distribution electric utility or transmitter proposes to construct or install the works or any part of them and has first made a report of the nature of the proposed works and their possible effect and provided plans of the proposed works or part of them to the Minister of Transportation and Infrastructure, and that Minister has given his or her written consent to the construction or installation of the works or part of them,
- (b) the Corporation, distribution electric utility or transmitter proposes to remove the works or any part of them and has first made a report to the Minister of Transportation and Infrastructure of the nature of the proposed removal and its possible effect, and that Minister has given his or her written consent to the removal of the works or part of them, or
- (c) in any other case, the Corporation, distribution electric utility or transmitter has provided notice to the Minister of Transportation and Infrastructure before exercising the powers.

94(3) If any public land, public highway, public street, public place, bridge, viaduct or railway referred to in subsection (2) is under the administration and control of

- (a) the New Brunswick Highway Corporation, any reference in subsection (2) to the Minister of Transportation and Infrastructure shall be read as a reference to the New Brunswick Highway Corporation, and that subsection applies with any other necessary modifications, or

(b) a project company as defined in the *New Brunswick Highway Corporation Act*, any reference in subsection (2) to the Minister of Transportation and Infrastructure shall be read as a reference to that project company, and that subsection applies with any other necessary modifications.

94(4) Despite any other provision of this Act or any provision of any other Act, no claim shall be made against the Corporation or another distribution electric utility or transmitter for damage to crops, shrubs, trees or other growing things or to land caused by or incidental to clearing rights-of-way for distribution or transmission lines or to the construction, maintenance, inspection, repair or removal of conductors, wires or works unless notice of the claim is given to the Corporation, distribution electric utility or transmitter, as the case may be, in writing signed by the claimant not later than 60 days after the day on which the act or omission on which the claim is based occurred.

94(5) If a claim is made after the time limited under subsection (4), the Corporation, distribution electric utility or transmitter, if satisfied that it has not been prejudiced by the delay, may waive the provisions of subsection (4) as to notice.

94(6) This section is subject to any agreement in effect between the Corporation or another distribution electric utility or transmitter, as the case may be, and the Department of Transportation and Infrastructure, the New Brunswick Highway Corporation or a project company as defined in the *New Brunswick Highway Corporation Act*.

Application to Court

95(1) If resistance or opposition is made by any person to the Corporation or another distribution electric utility or transmitter entering land and taking possession of or using or enjoying any property when the Corporation, distribution electric utility or transmitter is entitled to do so, or exercising any of its powers under the authority of this Act with respect to any property, the Corporation, distribution electric utility or transmitter may apply to the Court for an order that the necessary steps be taken to put the Corporation, distribution electric utility or transmitter, or a person acting on its behalf, in possession of the property or that any other acts or things be done that are necessary to enable it to exercise its powers with respect to the property.

95(2) Following the hearing of the application, the Court may issue the order applied for or make any other decision it considers appropriate.

Underground cables

96(1) If an easement that permits or provides for the right to lay or maintain underground cables or conduits is recorded or registered in the appropriate land registration office by way of

expropriation proceedings or recorded or registered agreements or otherwise, no person has any right of action or shall seek to enforce any claim against the Corporation or another distribution electric utility or transmitter for damages suffered, resulting directly or indirectly from any underground cable or conduit maintained in accordance with the terms of the easement, whether by reason of interference by anyone with the cable or conduit or otherwise.

96(2) Any person damaging or interfering with a cable or conduit described in subsection (1) is liable to the Corporation, distribution electric utility or transmitter for damages or loss suffered by it by reason of the damage or interference.

96(3) Subsection (2) is subject to any agreement in effect between the Corporation or another distribution electric utility or transmitter, as the case may be, and the Department of Transportation and Infrastructure, the New Brunswick Highway Corporation or a project company as defined in the *New Brunswick Highway Corporation Act*.

Works affixed to real property

97 Despite any other provision of this Act, any provision of any other Act or any rule of law, if the works of the Corporation or another distribution electric utility or transmitter have been affixed to real property, the works remain subject to the rights of the Corporation, distribution electric utility or transmitter as fully as they were before being so affixed and do not become part of the real property unless otherwise agreed by the Corporation, distribution electric utility or transmitter in writing.

Alteration of works

98(1) If, for the purpose of making improvements to any public highway, street, lane or other public place, including widening or changing the course of it, it is necessary to take up, remove or change the location of any of the works of the Corporation or of another distribution electric utility or transmitter, the responsible authority proposing to make the improvements to the public place shall notify the Corporation, distribution electric utility or transmitter of its intentions, specifying the necessary alteration or change of location of the works.

98(2) Subject to subsection (3), the costs and expenses incurred in making the alterations or changes referred to in subsection (1) shall be apportioned between the Corporation, distribution electric utility or transmitter, as the case may be, and the municipality or other authority making the improvements to the public place in the manner that they may agree on, or in case of disagreement, in the manner determined by the Board.

98(3) If the authority making the improvements to the public place is the Department of Transportation and Infrastructure, the New Brunswick Highway Corporation or a project company as defined in the *New Brunswick Highway Corporation Act*, the costs and expenses incurred in making the alterations or changes referred to in subsection (1) shall be apportioned in accordance with any agreement in effect between that authority and the Corporation, distribution electricity utility or transmitter, as the case may be, or if no agreement is in effect, in the manner determined by the Board.

98(4) If some part or all of any public highway, street, lane or other public place is closed by the Crown or by any municipality or other authority, the Corporation or another distribution electric utility or transmitter may leave its works in place and has the same rights with respect to its works as though the public highway, street, lane or other public place or part of it had not been closed.

98(5) If any wires, anchors, crossarms or equipment attached to poles of the Corporation or of another distribution electric utility or transmitter on, under, over, across, or along any public highway, street, lane or other public place project over land adjoining the public highway, street, lane or other public place, the Corporation, distribution electric utility or transmitter, as the case may be, is liable only for actual physical damage, if any, caused by the wires, anchors, crossarms or equipment.

Division G

Emergencies

Emergency plans

99(1) The Corporation shall prepare and file with the Minister any emergency plans that the Minister considers necessary.

99(2) The Minister may require an owner, operator or user of the integrated electricity system to prepare and file with the Minister any emergency plans that the Minister considers necessary.

99(3) The Corporation shall assist in coordinating the preparation of plans under subsections (1) and (2).

99(4) The Minister may direct the Corporation to implement an emergency plan filed under subsection (1), with any changes that the Minister considers necessary.

99(5) The Minister may direct an owner, operator or user of the integrated electricity system who has filed an emergency plan under subsection (2) to implement the plan, with any changes that the Minister considers necessary.

PART 6
REGULATION OF ELECTRICITY

Division A

Planning

Integrated resource plan

100(1) The Corporation shall, in accordance with subsection (4), submit to the Executive Council for approval an integrated resource plan that covers a planning period of not less than 20 years and that includes the following:

- (a) the Corporation's load forecast for the planning period;
- (b) demand-side management and energy efficiency plans considered by the Corporation and those it has chosen for implementation;
- (c) supply-side options considered by the Corporation and those it has chosen for implementation;
- (d) the anticipated impact on load of the demand-side management and energy efficiency plans chosen for implementation by the Corporation;
- (e) the cost implications of the demand-side management and energy efficiency plans and supply-side options chosen for implementation by the Corporation as projected for the initial 10-year period covered by the integrated resource plan;
- (f) any key assumptions relied on by the Corporation in developing the integrated resource plan;
- (g) a description of the stakeholder consultations carried out by the Corporation in developing the integrated resource plan; and
- (h) any other information the Corporation considers relevant or that is ordered by the Board under subsection (3) to be included.

100(2) Subject to any changes requested under subsection (7), an integrated resource plan shall be developed by the Corporation in accordance with the principles of least-cost service, economic and environmental sustainability and risk management.

100(3) The Board may, on its own motion, order the Corporation to include additional information in any subsequent integrated resource plans submitted under subsection (1) for the approval of the Executive Council.

100(4) An integrated resource plan shall, at the following times, be submitted to the Executive Council under subsection (1) for approval:

- (a) within one year after the commencement of this section;

(b) at any time on the request of the Board; and

(c) at least once every three years after the date of the submission of the latest integrated resource plan under either paragraph (a) or (b).

100(5) The Executive Council shall approve or reject an integrated resource plan within 90 days after receipt of the plan.

100(6) If the Executive Council does not render a decision under subsection (5) within the time specified in that subsection, the integrated resource plan shall be deemed to be approved on the expiry of that time.

100(7) The Executive Council may request changes to an integrated resource plan or request additional information from the Corporation before approval.

100(8) An integrated resource plan approved by the Executive Council under subsection (5) or deemed to be approved under subsection (6) shall be filed by the Corporation with the Board within 30 days after the approval or deemed approval.

Strategic, financial and capital investment plan

101(1) The Corporation shall file with the Board for information purposes within one year after the commencement of this section and annually after that a strategic, financial and capital investment plan covering the next ten fiscal years that includes the following:

(a) a schedule showing, for each fiscal year covered by the plan, each capital project contemplated by the Corporation that has a total projected capital cost of \$50 million or more and the related projected annual capital expenditures for each such project;

(b) a schedule showing, for each fiscal year covered by the plan, the projected aggregate capital expenditures that relate to the capital projects contemplated by the Corporation that have a projected total capital cost of less than \$50 million;

(c) the revenue requirements of the Corporation for each fiscal year covered by the plan;

(d) a projected balance sheet for the Corporation for each fiscal year covered by the plan;

(e) the Corporation's load and revenue forecast for each fiscal year covered by the plan;

(f) a schedule showing, for each fiscal year covered by the plan, the projected annual overall change in rates for sales of electricity within the Province, expressed as a percentage, that is necessary to meet the revenue requirements referred to in paragraph (c); and

(g) any other information that the Corporation considers relevant or that is ordered by the Board under subsection (2) to be included.

101(2) The Board may, on its own motion, order the Corporation to include additional information in any subsequent strategic, financial and capital investment plan filed under subsection (1).

101(3) A plan filed under subsection (1) shall not be inconsistent with the latest integrated resource plan approved or deemed to be approved under section 100.

Division B

Electricity Services

Application

102 This Division applies to the Corporation in respect of the services provided by it to consumers and to municipal distribution utilities.

Rates

103(1) The Corporation shall make an application to the Board for approval of the Corporation's schedules of rates it proposes to charge for its services

(a) for the fiscal year which commences on April 1, 2015, and

(b) for each subsequent fiscal year.

103(2) An application made by the Corporation under subsection (1) shall include, but not be limited to, the following:

(a) the Corporation's projection of its load and revenue for the fiscal year to which the application relates;

(b) the Corporation's revenue requirements for the fiscal year to which the application relates; and

(c) the Corporation's schedules of rates it proposes to charge for the fiscal year to which the application relates.

103(3) Nothing prevents the Corporation from making an application to the Board at any time for the approval of interim rates.

103(4) When an application has been filed under subsection (1) by the Corporation, the Corporation is entitled to charge for its services the rates last approved or fixed by the Board until such time as new rates are approved or fixed.

103(5) The Board shall, on receipt of an application under this section, proceed under section 127.

103(6) The Board, at the conclusion of the hearing under section 127, shall

- (a) approve the rates applied for, if satisfied that they are just and reasonable or, if not so satisfied, fix other rates that it finds to be just and reasonable,
- (b) set the time at which any change in the rates is to take effect, and
- (c) require the Corporation to file with the Board, before the time set under paragraph (b), updated schedules of rates approved or fixed by the Board.

103(7) In approving or fixing just and reasonable rates, the Board shall base its order or decision on the Corporation's revenue requirements, taking into consideration

- (a) the policy set out in section 68,
- (b) the most recent integrated resource plan approved or deemed to be approved by the Executive Council under section 100,
- (c) the most recent strategic, financial and capital investment plan filed with the Board under section 101,
- (d) any requirements imposed by law on the Corporation that may be relevant to the application, including, without limitation, requirements regarding demand-side management and energy efficiency plans and renewable energy requirements,
- (e) any directive issued by the Executive Council under section 69 that may be relevant to the application, and
- (f) any policy established by a regulation made under paragraph 142(1)(f) that may be relevant to the application.

103(8) In approving or fixing just and reasonable rates, the Board may take into consideration

- (a) accounting and financial policies of the Corporation,
- (b) matters of cost allocation and rate design,
- (c) customer service related charges,
- (d) the Corporation's demand-side management and energy efficiency plans, and
- (e) any other factors that the Board considers relevant.

Compensation

104 If the Board has approved or fixed a rate for a service, the Corporation shall not charge, demand, collect or receive greater or less compensation for that service than the approved or fixed rate.

Review of rates

105(1) On request of the Lieutenant-Governor in Council or on its own motion, the Board may review any or all of the rates charged by the Corporation for sales of electricity within the Province.

105(2) On a review under subsection (1), the Board shall

(a) direct the Corporation to file an application for confirmation of any or all of the rates charged by it,

(b) give notice to the Corporation of the date of the hearing of the application, and

(c) proceed under section 127.

105(3) The Board, at the conclusion of the hearing, shall

(a) confirm the rates, if it is satisfied that they are just and reasonable or, if not so satisfied, fix other rates that it finds to be just and reasonable, and

(b) set the time at which any change in the rates is to take effect.

Rates that take effect immediately

106(1) The Corporation may, in relation to a service for which rates are otherwise not regulated under this Division, make a rate that takes effect immediately, and the Corporation shall immediately file with the Board a schedule of that rate, which shall be the same for all like and contemporaneous services.

106(2) The Corporation shall, if required to do so by the Board, demonstrate to the satisfaction of the Board that a rate made under subsection (1) is not in respect of a service for which rates are otherwise regulated under this Division.

Division C

Approval of Capital Projects

Approval of capital projects of the Corporation

107(1) Subject to subsections (4) and (6), if the total projected capital cost to the Corporation of a capital project is \$50 million or more, the Corporation shall not incur, in relation to the capital project, capital expenditures in excess of an amount equal to 10% of the total projected capital cost of the capital project before the capital project has been approved by the Board.

107(2) For the purposes of subsection (1), the Corporation shall make an application to the Board.

107(3) The Corporation may apply to the Board for approval of a capital project with a total projected capital cost of less than \$50 million.

107(4) On an application by the Corporation for approval of a capital project described in subsection (1) that is made after the Corporation has incurred capital expenditures in excess of the amount indicated in that subsection in relation to the project, the Board may give retroactive effect to the approval if the Board is satisfied that

(a) the expenditures were necessary for the reliability, adequacy or safety of the integrated electricity system, of the Corporation's generation facilities or of the Corporation's distribution system, or

(b) the expenditures were necessary to relieve the Corporation of undue financial hardship and arose due to

(i) circumstances beyond the reasonable control of the Corporation acting in accordance with good utility practice, or

(ii) circumstances that were unforeseeable by the Corporation acting in accordance with good utility practice.

107(5) Despite subsection (1), a capital project that was approved by the board of directors of the Corporation, of a predecessor of the Corporation, or of a subsidiary of the Corporation before the commencement of this section shall be conclusively deemed to be prudent and shall not require the approval of the Board, if expenditures or contractual commitments were made by the Corporation, the predecessor of the Corporation, or the subsidiary of the Corporation in relation to the project before the commencement of this section.

107(6) In the event that the total projected capital cost of a capital project in respect of which subsection (5) applies is \$50 million or more, the Corporation shall not, without the prior approval of the Board, incur, in relation to the capital project, capital expenditures in excess of those approved with regard to the capital project by the relevant board of directors before the commencement of this section.

107(7) For the purposes of subsection (6), the Corporation shall make an application to the Board.

107(8) An application under this section may be joined with any other application under this Part.

107(9) If satisfied as to the prudence of a capital project for which approval is applied for under this section, the Board shall approve the capital project.

107(10) For the purposes of subsection (6), if satisfied as to the prudence of the excess capital expenditures, the Board shall approve those capital expenditures.

107(11) In making a decision under subsection (9) or (10), the Board shall take into consideration

(a) the policy set out in section 68,

(b) the most recent integrated resource plan approved or deemed to be approved by the Executive Council under section 100,

(c) the most recent strategic, financial and capital investment plan filed with the Board under section 101,

(d) any requirements imposed by law on the Corporation that may be relevant to the application, including, without limitation, requirements regarding demand-side management and energy efficiency plans and renewable energy requirements,

(e) any directive issued by the Executive Council under section 69 that may be relevant to the application,

(f) any policy established by a regulation made under paragraph 142(1)(f) that may be relevant to the application, and

(g) any other factors that the Board considers relevant.

107(12) If the Corporation makes an application for approval under this section, no other transmitter is required to be a party to the proceedings before the Board.

Approval of capital projects of transmitters other than the Corporation

108(1) A transmitter, other than the Corporation, may apply to the Board for pre-approval of a capital project.

108(2) If satisfied as to the prudence of a capital project, the Board shall approve the capital project.

108(3) An application under this section may be joined with any other application under this Part.

108(4) If a transmitter, other than the Corporation, makes an application under this section, the Corporation is not required to be a party to the proceedings before the Board.

Division D

Transmission Service and Ancillary Services

Application

109 This Division applies to

(a) transmitters, and

(b) the transmission tariff.

Approved transmission tariff for the Province

110(1) There shall be one approved transmission tariff governing the provision of transmission service and ancillary services in the Province.

110(2) Transmission service and ancillary services provided by a transmitter shall be provided only in accordance with the approved transmission tariff.

Transmission tariff must provide for open access

111(1) The approved transmission tariff shall provide for open and non-discriminatory access to transmission service and ancillary services.

111(2) The approved transmission tariff shall be just and reasonable and shall under substantially similar circumstances and conditions be applied equally to all persons on the same basis or at the same rate in a non-discriminatory manner.

111(3) The Corporation shall apply to the Board for approval of a standards of conduct compliance program.

Question of fact

112 The Board may determine, as a question of fact, whether or not transmission service or ancillary services provided under substantially similar circumstances and conditions has or have been charged for equally to all persons on the same basis or at the same rate in a non-discriminatory manner.

Application for approval of transmission tariff, changes to transmission tariff or transmission revenue requirements

113(1) Within one year after the commencement of this section, the Corporation shall make an application to the Board for approval of

(a) a transmission tariff, and

(b) the Corporation's transmission revenue requirements.

113(2) The Corporation may at any time apply to the Board for approval of changes to the provisions of the approved transmission tariff.

113(3) Following the decision of the Board with respect to the application under subsection (1), the Corporation shall, at least once every three years, make an application to the Board for approval of its transmission revenue requirements.

113(4) A transmitter, other than the Corporation, may make an application to the Board for approval of its transmission revenue requirements.

113(5) The Board shall, on receipt of any application under this section, proceed under section 127.

113(6) When an application is made under this section by a transmitter for approval of its transmission revenue requirements, no other transmitter is required to attend the hearing under section 127, but any other transmitter may provide a notice to the Board that it intends to attend the hearing for the purpose of defending its transmission revenue requirements.

113(7) A transmitter who provides a notice under subsection (6) shall be deemed to be a party to the proceedings before the Board.

113(8) When an application is made under subsection (2), no transmitter shall be required to apply for approval of its transmission revenue requirements unless the Board determines that the changes to the provisions of the approved transmission tariff that are applied for are likely to have a material impact on the transmission revenue requirements of the transmitter.

113(9) At the time the Corporation files an application made under subsection (2) with the Board, the Corporation shall provide notice of the application to the other transmitters.

113(10) For the purposes of the approval or fixing of the Corporation's transmission revenue requirements, the Board shall permit a return on equity within a range prescribed by regulation.

113(11) The capital structure prescribed by regulation shall be used by the Board for the purposes of the approval or fixing of the Corporation's transmission revenue requirements.

113(12) In the case of an application under subsection (1), the Board shall, at the conclusion of the hearing, comply with subsection (14) and do the following:

(a) approve the transmission tariff, if it is satisfied that the transmission tariff is just and reasonable, or if not so satisfied fix any other transmission tariff that it finds to be just and reasonable; and

(b) set the time at which the transmission tariff or any provision of it is to take effect.

113(13) In the case of an application under subsection (2), the Board, at the conclusion of the hearing, shall

(a) approve the changes that it is satisfied are just and reasonable,

(b) make any other changes to the approved transmission tariff that it finds to be just and reasonable, and

(c) set the time at which any change in the approved transmission tariff is to take effect.

113(14) In the case of an application under this section in which a transmitter applies for approval of its transmission revenue requirements, the Board shall, at the conclusion of the

hearing, approve or fix just and reasonable rates pertaining to the provision of transmission service and ancillary services and set the time at which any change in the approved transmission tariff is to take effect, and the Board shall base its decision on the following:

- (a) if only one transmitter is a party to the proceedings before the Board,
 - (i) that transmitter's transmission revenue requirements as approved or fixed by the Board, and
 - (ii) the other transmitters' transmission revenue requirements that were last approved or fixed by the Board; and
- (b) if more than one transmitter is a party to the proceedings before the Board, all those transmitters' transmission revenue requirements as approved or fixed by the Board.

113(15) Subject to subsection (16), in making any order or decision in respect of an application under this section, the Board shall take into consideration

- (a) the policy set out in section 68,
- (b) the most recent integrated resource plan approved or deemed to be approved by the Executive Council under section 100,
- (c) the most recent strategic, financial and capital investment plan filed with the Board under section 101,
- (d) any requirements imposed by law on the Corporation that may be relevant to the application, including, without limitation, requirements regarding demand-side management and energy efficiency plans and renewable energy requirements,
- (e) any directive issued by the Executive Council under section 69 that may be relevant to the application,
- (f) any policy established by a regulation made under paragraph 142(1)(f) that may be relevant to the application, and
- (g) any other factors that the Board considers relevant.

113(16) Paragraphs (15)(b) and (c) do not apply to the Board in making an order or decision in respect of an application under subsection (1).

Administration of approved transmission tariff

114 The Corporation is responsible for the administration of the approved transmission tariff.

Collection under approved transmission tariff

115 A transmitter shall not charge, demand, collect or receive greater or less compensation for transmission service or ancillary services than is prescribed in the approved transmission tariff.

Review of approved transmission tariff

116(1) On request of the Lieutenant-Governor in Council or on its own motion, the Board may review all or any portion of the approved transmission tariff.

116(2) On a review under subsection (1), the Board shall

(a) direct the Corporation to file an application for confirmation of any portion or all of the approved transmission tariff,

(b) give notice to the transmitters of the date of the hearing of the application, and

(c) proceed under section 127.

116(3) If, in the course of a review under this section, the Board is of the opinion that there is likely to be a material change to a transmitter's transmission revenue requirements, the Board may require the transmitter to attend the hearing for the purpose of defending those transmission revenue requirements, in which case the transmitter shall be deemed to be a party to the proceedings before the Board.

116(4) The Board, at the conclusion of the hearing, shall

(a) confirm the transmission tariff, if it is satisfied that the transmission tariff is just and reasonable, or if not so satisfied, fix any other transmission tariff that it finds to be just and reasonable, and

(b) set the time at which any change in the transmission tariff is to take effect.

Acquiring capacity-based ancillary services

117 A person, including the Corporation, who has an obligation to acquire capacity-based ancillary services for any purpose may acquire those services from its own resources or from other sources.

PART 7

RELIABILITY STANDARDS

Definition of "prescribed functions"

118 In this Part, "prescribed functions" means functions prescribed by regulation under subparagraph 142(1)(j)(vi).

Approval of reliability standards

119(1) Based on materials and information filed with it by the Corporation in accordance with the regulations, the Board may, subject to and in accordance with the regulations and subject to subsection (2),

(a) approve a reliability standard, with or without modifications,

(b) approve modifications to an approved reliability standard,

- (c) refuse to approve a reliability standard or modifications to an approved reliability standard,
- (d) remand a reliability standard or modifications to an approved reliability standard to the Corporation for further consideration, or
- (e) retire an approved reliability standard.

119(2) The Board shall not approve a reliability standard, with or without modifications, or approve modifications to or retire an approved reliability standard without having considered

(a) the potential impact of the approval or the retirement on the reliability of the bulk power system,

(b) the potential cost and benefits of the approval or the retirement,

(c) the public interest, and

(d) any other factors that the Board considers relevant.

119(3) Despite subsection (2), the Board shall approve a reliability standard or approve modifications to or retire an approved reliability standard in the circumstances set out in the regulations.

119(4) The *Regulations Act* does not apply to an approved reliability standard.

Compliance with approved reliability standards

120(1) Subject to the outcome of any appeal under subsection 121(3), an approved reliability standard applies to any person registered under subsection 121(1) or notified under subsection 121(2) of a requirement to register, to the extent that the person carries out prescribed functions in respect of which the approved reliability standard applies.

120(2) A person to whom an approved reliability standard applies shall comply with the standard.

120(3) Despite subsection (2), an owner, operator or user of the bulk power system who is required to comply with an approved reliability standard may, subject to the regulations, enter into an agreement with a person to transfer the obligation to comply with any requirements of that approved reliability standard to that person if that person is otherwise obligated to comply with those requirements.

Registration

121(1) An owner, operator or user of the bulk power system who carries out prescribed functions in respect of which an approved reliability standard applies shall register with the Board in accordance with the regulations.

121(2) The Board shall, in accordance with the regulations, notify owners, operators and users of the bulk power system of a requirement to register under subsection (1).

121(3) A person required to register under subsection (1) may appeal the requirement to the Board in accordance with the regulations.

121(4) An appeal does not suspend the requirement to comply with an approved reliability standard under subsection 120(2) pending the determination of the appeal unless the Board orders otherwise.

Compliance monitoring and enforcement

122(1) The Board is authorized

(a) to monitor and assess compliance with approved reliability standards in accordance with the regulations, including, but not limited to, identifying actual or potential violations of the standards, and

(b) to enforce approved reliability standards in accordance with this section and the regulations, including, but not limited to, making orders or decisions in respect of actual or potential violations.

122(2) Despite any other provision of this Act or any provision of any other Act, the Board, by contract, may authorize a compliance body

(a) to carry out the responsibility referred to in paragraph (1)(a) or any part of it,

(b) to assist or advise the Board in respect of the responsibility referred to in paragraph (1)(b) or any part of it, or

(c) to carry out or exercise any power, duty, function, responsibility or authority conferred on the Board under this Act or the regulations if the power, duty, function, responsibility or authority has been prescribed by regulation for the purposes of this paragraph.

122(3) A compliance body authorized in accordance with paragraph (2)(a) or (c) to carry out or exercise powers, duties, functions, responsibilities or authorities or an employee or agent of that compliance body has the powers of an inspector under section 134, and that section, section 135 and subsection 140(1) apply, with the necessary modifications, as though the compliance body, employee or agent were an inspector.

122(4) Subject to the regulations, the Board may, by order, require a person who has been determined by the Board to have violated an approved reliability standard to do any one or more of the following:

(a) in accordance with the regulations,

- (i) to prepare and submit to the Board for approval a plan to correct the violation and to prevent its recurrence, and
- (ii) to carry out the plan as approved by the Board;
- (b) to pay financial penalties as provided for by the regulations;
- (c) to refrain from carrying on any activities, functions or operations specified in the order;
- (d) to carry out any activities, functions or operations specified in the order only in accordance with any restrictions specified in the order;
- (e) to disconnect any works specified in the order from the bulk power system;
- (f) to do or refrain from doing any act or thing prescribed by regulation.

122(5) Any order made by the Board under subsection (4) shall not require a person to construct new works or alter existing works in order to increase generation or transmission capacity.

122(6) If the Board requires the payment of a financial penalty under paragraph (4)(b), the penalty shall be remitted to the Minister of Finance to be paid into the Consolidated Fund.

122(7) Any measures or penalties required by an order under subsection (4) shall bear a reasonable relationship to the seriousness of the violation in respect of which the order is made.

122(8) In making an order under subsection (4), the Board shall take into consideration any efforts of the person against whom the order is made to remedy the violation in a timely manner and any other factors it considers relevant.

Reliable supply

123 Nothing in this Part or the regulations relating to this Part abrogates or derogates from any authority or obligation of the Corporation under this Act or the approved transmission tariff to ensure the safety, adequacy, security and reliable supply of electric service within the Province.

Provision of regulations prevails

124 A provision of the regulations that prescribes procedures for proceedings of the Board under this Part or under the regulations relating to this Part prevails over any inconsistent provision of the *Energy and Utilities Board Act*.

PART 8

NEW BRUNSWICK ENERGY AND UTILITIES BOARD

Forbearance

125(1) The Board may forbear, in whole or in part and conditionally or unconditionally, from the exercise of any power or the performance of any duty, if the Board finds as a question of fact that forbearance would be consistent with the purposes of this Act.

125(2) If the Board does forbear from regulation, it may later resume a greater degree of regulation if it considers that its level of forbearance is no longer warranted.

Rules of the Board

126 The Board may make rules respecting the practice and procedure regarding all matters over which it has jurisdiction under this Act or the regulations, and the rules, when approved by the Lieutenant-Governor in Council, shall have the force of law.

Hearings

127(1) Notice of the hearing of an application under section 103, 105, 113 or 116 shall, unless otherwise ordered by the Board, be given by advertisement for a period of not less than 20 days, in one or more newspapers as directed by the Board and by any other means that the Board may direct.

127(2) When an application has been made and notice of the hearing is given, the Board shall conduct the hearing.

127(3) The hearing of an application under section 103 or 105 and the hearing of an application under section 113 or 116 may be held at the same time or separately, as determined by the Board.

127(4) When the Board determines that it is not contrary to the public interest to do so, it may conduct any hearing under this Act or the regulations based solely on written evidence and submissions.

Burden of proof

128 In an application under this Act or the regulations, the burden of proof is on the applicant.

Powers of inquiry

129 The Board may, on its own motion or on a complaint made by any person, inquire into, hear and determine any matter in respect of which it has jurisdiction under this Act or the regulations if it appears to the Board

(a) that, in relation to that matter, any person has failed to do any act, matter or thing required to be done under this Act or the regulations or by a rule, order or direction made by the Board, or that any person has done or is doing any act, matter or thing contrary to or in contravention of this Act or the regulations or any rule, order or direction made by the Board, or

(b) that the circumstances may require it, in the public interest, to make any order or give any direction, leave or approval that by law it is authorized to make or give, or concerning any act, matter or thing that by this Act or the regulations or by rule, order or direction made by the Board is prohibited or required to be done.

Orders of the Board

130 The Board may, in relation to any matter in respect of which it has jurisdiction under this Act or the regulations,

- (a) order and require any person to do, without delay or within or at any specified time and in any manner it determines, any act, matter or thing that the person is or may be required to do under this Act or the regulations or a rule or order or direction made by the Board, and
- (b) forbid the doing or continuing of any act, matter or thing that is contrary to the Act or the regulations or a rule or order or direction made by the Board.

Order in the public interest

131 Any order or decision of the Board made under this Act or the regulations is subject to any terms or conditions that the Board considers necessary in the public interest.

Effective date of order

132 Every order or decision of the Board comes into effect on the date it is made unless the order or decision states otherwise.

Appointment of inspectors

133(1) The Board may appoint any person as an inspector for the purposes of ensuring compliance with the provisions of Part 6 or 7, the regulations relating to those Parts, or an order or decision of the Board.

133(2) The Board shall issue to every inspector a certificate of appointment and every inspector, in the execution of his or her duties, shall produce his or her certificate of appointment on request.

Inspections

134(1) An inspector may, at any reasonable time, on producing proper identification if so requested, enter any premises, building or place and may

- (a) require the production of documents or things that may be relevant to the inspection,
- (b) inspect documents or things that may be relevant to the inspection,
- (c) remove documents or things relevant to the inspection for the purpose of making copies or extracts,
- (d) require information from any person concerning a matter related to the inspection, and
- (e) be accompanied by a person who has special or expert knowledge in relation to the subject matter of the inspection.

134(2) In carrying out an inspection, an inspector may

- (a) use a data processing system at the premises, building or place where the records, documents or things are kept,
- (b) reproduce any record or document that may be relevant to the inspection, and
- (c) use any copying equipment to make copies of any record or document that may be relevant to the inspection.

134(3) If copies of or extracts from documents or things are made under this section and certified as being true copies of or extracts from the originals by the person who made them, the copies or extracts are admissible in evidence to the same extent and have the same evidentiary value as the originals.

134(4) An inspector who removes documents or things shall give a receipt for the items and return the items as soon as possible after the making of copies or extracts.

134(5) Before or after attempting to enter or to have access to any premises, building or place for a purpose mentioned in subsection (1), an inspector may apply to a judge for an entry warrant under the *Entry Warrants Act*.

134(6) In carrying out an inspection, an inspector shall not do or cause to be done any act that would result in a violation of an approved reliability standard.

134(7) Every person carrying out an inspection or accompanying a person carrying out an inspection under this section shall preserve secrecy in respect of all matters that come to his or her knowledge in the course of the inspection, and shall not communicate those matters to any person except

- (a) if required to do so in connection with the administration of this Act or in connection with any proceedings under this Act or the regulations,
- (b) if it is to his or her counsel, or
- (c) if the person to whom the information relates has consented to the communication.

134(8) No person to whom subsection (7) applies shall be required to give testimony in any civil proceeding with regard to information obtained by him or her in the course of his or her inspection.

Prohibitions

135(1) No person shall obstruct an inspector who is carrying out or attempting to carry out an inspection under this Act or the regulations or withhold or destroy or conceal or refuse to furnish any information or other thing required by the inspector for the purposes of the inspection.

135(2) No person shall knowingly make a false or misleading statement, either orally or in writing, to an inspector while the inspector is engaged in carrying out his or her duties under this Act or the regulations.

PART 9
GENERAL

Electricity from renewable resources

136(1) The Corporation shall, in accordance with the regulations, ensure that a portion of the electricity that it obtains is from renewable resources.

136(2) The Corporation shall report to the Minister, in accordance with the regulations, respecting its compliance with this section and shall, if required by the Minister, demonstrate to the satisfaction of the Minister that it has met the requirements of this section.

Demand-side management and energy efficiency

137 Distribution electric utilities shall implement plans to meet demand-side management and energy efficiency requirements, if any, set out in the regulations.

Segregated funds

138(1) Despite the *Financial Administration Act*, the Minister of Finance may establish segregated funds for the purposes of receiving money from the Corporation to be applied to the payment of expenses associated with the decommissioning and irradiated fuel management costs relating to the Point Lepreau nuclear generating station.

138(2) The segregated funds established under subsection (1) shall be managed in accordance with the terms established by the Minister of Finance.

Refurbishment of the Point Lepreau nuclear generating station

139(1) In this section, “project” means the project to refurbish the Point Lepreau nuclear generating station that began in 2008. (*projet*)

139(2) The Corporation shall maintain a deferral account that records the costs, expenses and offset amounts

(a) required to be recorded under subsection 143.1(7) of the *Electricity Act*, chapter E-4.6 of the Acts of New Brunswick, 2003, as that subsection read immediately before the repeal of that Act, and

(b) approved by the Board for the purposes of establishing the deferral account.

139(3) For the purposes of this Act, the project shall be deemed to be prudent and the costs and expenses recorded in the deferral account maintained under subsection (2) shall be deemed to be prudent and necessary to carry out the project.

139(4) The Board shall ensure that the balance in the deferral account, plus any financing costs incurred by the Corporation in relation to the balance in the deferral account,

(a) is recovered by the Corporation over the operating life of the refurbished Point Lepreau nuclear generating station, and

(b) is reflected in the rates charged by the Corporation in respect of the services referred to in section 102.

139(5) The amounts recorded in the deferral account maintained under subsection (2) and the financing costs referred to in subsection (4) shall be deemed to be part of the revenue requirements of the Corporation and shall be deemed to be necessary for the provision of the services referred to in section 102.

139(6) For the purposes of an application to the Board for approval of a change in rates for its services referred to in section 102, the Corporation shall present its revenue requirements in such a manner that the costs and expenses associated with the deferral account are shown separately from the other revenue requirements of the Corporation.

Offences and penalties

140(1) A person who violates or fails to comply with subsection 135(1) or (2) commits an offence punishable under Part 2 of the *Provincial Offences Procedure Act* as a category E offence.

140(2) A person who violates or fails to comply with an order or decision of the Board, other than an order or decision of the Board made under Part 7 or the regulations relating to that Part, commits an offence punishable under Part 2 of the *Provincial Offences Procedure Act* as a category F offence.

Administration of Act

141 The Minister is responsible for the administration of this Act and may designate one or more persons to act on the Minister's behalf.

Regulations

142(1) The Lieutenant-Governor in Council may make regulations

- (a) prescribing Acts or provisions of Acts that do not apply to the amalgamation under subsection 3(1) or to the continuation of the employment of employees under subsection 7(1), subject to any conditions or restrictions prescribed by the regulations;
- (b) respecting the nomination process provided for in subsection 15(7) or 23(7), including, without limitation, recruitment, assessment and selection processes, the qualifications and skill requirements for nominees and the process for further nominations in the event of the rejection of nominees;
- (b.1) for the purposes of subsection 23(11), respecting circumstances in which the Lieutenant-Governor in Council may remove the President and Chief Executive Officer from office;
- (c) prescribing Acts or provisions of Acts that do not apply to the transfer to the Corporation and vesting in the Corporation of property, claims, rights, liabilities, obligations and privileges under subsection 53(1) or to the transfer of employees under subsection 57(1), subject to any conditions or restrictions prescribed by the regulations;
- (d) respecting the calculation of the fees referred to in subsection 46(1);
- (e) respecting the manner in which and the time at which the fees referred to in subsection 46(1) are to be paid;
- (f) establishing policies to be observed by the Board in the exercise of any jurisdiction or authority conferred on it under this Act or the regulations;
- (g) prescribing a date for the purposes of subsection 74(6);
- (h) prescribing a range of return on equity for the purposes of subsection 113(10);
- (i) prescribing a capital structure for the purposes of subsection 113(11);
- (j) respecting reliability standards, including, without limitation,
 - (i) respecting the filing of reliability standards and other materials and information with the Board, including, but not limited to, requiring the Corporation to file materials or information within specified times,
 - (ii) respecting the approval of reliability standards and the applicability, publication, modification and retirement of approved reliability standards,
 - (iii) designating bodies as compliance bodies for the purposes of the definition “compliance body” in section 1,
 - (iv) for the purposes of subsection 119(3), respecting circumstances in which the Board is required to approve a reliability standard or approve modifications to or retire an approved reliability standard,

- (v) respecting transfers and agreements referred to in subsection 120(3),
- (vi) prescribing functions for the purposes of subsections 120(1), 121(1) and 150(1),
- (vii) respecting the registration of owners, operators and users of the bulk power system, including registration in respect of functions prescribed under subparagraph (vi),
- (viii) authorizing the Corporation or a compliance body to make recommendations as to which persons are required to be registered under subsection 121(1) and in relation to other matters pertaining to registration,
- (ix) respecting notifications by the Board under subsection 121(2),
- (x) prescribing any power, duty, function, responsibility or authority of the Board for the purposes of paragraph 122(2)(c),
- (xi) respecting compliance with and enforcement of approved reliability standards,
- (xii) respecting the preparation of plans to correct actual or potential violations of an approved reliability standard and to prevent their recurrence and the submission of those plans to the Board for its approval, including, but not limited to, the preparation and submission of plans referred to in subparagraph 122(4)(a)(i),
- (xiii) authorizing and governing the making of orders or decisions by the Board, including, but not limited to, an order or decision
 - (A) respecting the approval of a reliability standard, with or without modifications,
 - (B) respecting the approval of modifications to an approved reliability standard,
 - (C) respecting the refusal to approve a reliability standard or modifications to an approved reliability standard,
 - (D) respecting the remanding of a reliability standard or modifications to an approved reliability standard for further consideration,
 - (E) respecting the retirement of an approved reliability standard,
 - (F) in respect of an appeal referred to in subsection 121(3),
 - (G) that an actual or potential violation of an approved reliability standard has or has not occurred,
 - (H) respecting actual or potential violations of an approved reliability standard,
 - (I) requiring immediate action to remedy a potential violation of an approved reliability standard, or
 - (J) respecting the approval of plans referred to in subparagraph (xii),
- (xiv) respecting proceedings of the Board, including appeals referred to in subsection 121(3),

- (xv) respecting the carrying out of plans referred to in subparagraph (xii) that have been approved by the Board,
- (xvi) respecting financial penalties referred to in paragraph 122(4)(b), including, but not limited to, maximum penalties and methods used to determine penalties,
- (xvii) prescribing acts or things for the purposes of paragraph 122(4)(f),
- (xviii) respecting a compliance monitoring and enforcement program administered by the Board to monitor and assess compliance with and enforce approved reliability standards, including, but not limited to,
 - (A) authorizing the Board to develop, prepare and carry out annual implementation plans and other plans containing
 - (I) reporting requirements,
 - (II) requirements to submit to audits, spot checks, investigations and other compliance measures taken by the Board, and
 - (III) other requirements for monitoring and assessing compliance with the reliability standards,
 - (B) respecting settlement processes, and
 - (C) authorizing the Board to take enforcement actions,
- (xix) requiring owners, operators or users of the bulk power system to comply with annual implementation plans and other plans referred to in subparagraph (xviii),
- (xx) respecting the keeping of records by the Board and the confidentiality of information generated or received by the Board,
- (xxi) requiring and governing the provision of information by the Board to the Corporation, including, but not limited to, information respecting potential violations of approved reliability standards by persons other than the Corporation and information respecting orders made in respect of the potential violations, and
- (xxii) conferring additional powers or duties on the Board or the Corporation;
- (k) authorizing the Board to shorten or lengthen any time limit set out in a regulation made under paragraph (j) other than a time limit set out in a regulation made under subparagraph (i) of that paragraph;
- (l) respecting requirements for the Corporation to obtain electricity from renewable resources, including, without limitation,
 - (i) prescribing the criteria to be met for a resource to be considered a renewable resource, including, but not limited to, criteria relating to fuel source, ownership and location,

- (ii) setting the amount, or methods of determining the amounts, of electricity to be obtained from renewable resources or types of renewable resources,
- (iii) setting the purchase price, or method of setting the purchase price, for electricity obtained from renewable resources or types of renewable resources,
- (iv) prescribing requirements and procurement rules in relation to obtaining electricity from renewable resources or types of renewable resources, including, but not limited to,
 - (A) rules regarding distributed generation and technical requirements for connection to the distribution system of a distribution electric utility,
 - (B) rules regarding net metering, and
 - (C) requirements to be met by providers of electricity, and
- (v) authorizing a distribution electricity utility to establish requirements or policies for the connection of distributed generation or net metering facilities to the distribution electric utility's distribution system;
- (m) respecting a program requiring the Corporation to ensure that a portion of the electricity it obtains from renewable resources is generated by some or all of the large industrial enterprises located in the Province, including, without limitation,
 - (i) respecting the eligibility requirements for the program,
 - (ii) specifying the types of electricity generated from renewable resources that are eligible under the program,
 - (iii) setting the purchase price for electricity obtained in accordance with the program,
 - (iv) authorizing the Minister to determine the methodology and any relevant factors for consideration in the calculation of the Canadian average price for the purposes of the program, and
 - (v) respecting the method by which the target reduction percent is to be calculated for the purposes of the program and how the target reduction percent is to be achieved;
- (n) respecting reports to be made to the Minister for the purposes of section 136;
- (o) respecting demand-side management and energy efficiency requirements for the purposes of section 137;
- (p) prescribing modifications for the purposes of subsection 147(1);
- (q) exempting any person or class of persons from any provision of this Act or the regulations, subject to any conditions or restrictions prescribed by the regulations;

(*r*) designating bodies as standards bodies for the purposes of the definition “standards body” in section 1;

(*s*) defining “bulk power system”, “distributed generation” and “net metering” and any other word or expression used in this Act but not defined in this Act, for the purposes of this Act, the regulations or both;

(*t*) respecting any other thing required or authorized by this Act to be done by regulation;

(*u*) providing for any transitional matters that the Lieutenant-Governor in Council considers necessary or advisable in connection with the implementation of this Act;

(*v*) respecting any other matter that the Lieutenant-Governor in Council considers necessary or advisable to carry out effectively the intent of this Act.

142(2) A regulation made under this section may be general or particular in its application.

142(3) A regulation made under this section may incorporate by reference, in whole or in part, any laws, regulatory instruments, codes, standards, procedures or guidelines as they are amended from time to time before or after the making of the regulation or as they read at a fixed time and may require compliance with any law, regulatory instrument, code, standard, procedure or guideline so incorporated.

142(4) A regulation made under (1)(*a*) or (*c*) may provide that it has retroactive application to the date of the commencement of this section.

142(5) In a regulation made under any of the subparagraphs in paragraph (1)(*j*), the Lieutenant-Governor in Council may

(*a*) delegate a matter to the Board, the Corporation or a compliance body referred to in subsection 122(3), and

(*b*) confer a discretion on the Board, the Corporation or a compliance body referred to in subsection 122(3).

142(6) A regulation made under paragraph (1)(*l*) or (*m*) may provide that it has retroactive application to a date not earlier than January 1, 2012.

142(7) In a regulation made under paragraph (1)(*s*) defining the term “bulk power system”, the Lieutenant-Governor in Council

(*a*) may authorize the Board to modify, by order, the meaning of the defined term by including or excluding transmission elements, and

(*b*) may provide that, in making an order referred to in paragraph (*a*), the Board shall consider prescribed criteria as well as any other factors the Board considers relevant.

142(8) A regulation made under paragraph (1)(u)

(a) may provide that it has retroactive application to a date not earlier than the date of the commencement of this section, and

(b) may provide that it applies despite this or any other Act.

PART 10

TRANSITIONAL PROVISIONS

Directors and officers

143(1) *Despite subsection 15(5), a director of the New Brunswick Power Holding Corporation in office immediately before the commencement of this section, other than the President and Chief Executive Officer, shall, on the commencement of this section, be deemed to be appointed to the board of directors of the Corporation as a director referred to in paragraph 15(2)(b) for a term that is equal to the unexpired portion of his or her term as a director of the New Brunswick Power Holding Corporation and, despite the expiry of his or her term and subject to subsection 15(4), shall remain in office until the director resigns or is reappointed or replaced.*

143(2) *The Chair of the board of directors of the New Brunswick Power Holding Corporation in office immediately before the commencement of this section shall, on the commencement of this section, be deemed to be appointed as the Chair of the board of directors of the Corporation for a term that is equal to the unexpired portion of his or her term as Chair of the board of directors of the New Brunswick Power Holding Corporation and, despite the expiry of his or her term and subject to subsection 16(6), shall remain in office until he or she resigns or is reappointed or replaced.*

143(3) *The Vice-Chair of the board of directors of the New Brunswick Power Holding Corporation in office immediately before the commencement of this section shall, on the commencement of this section, be deemed to be appointed as the Vice-Chair of the board of directors of the Corporation for a term that is equal to the unexpired portion of his or her term as Vice-Chair of the board of directors of the New Brunswick Power Holding Corporation and, despite the expiry of his or her term and subject to subsection 16(6), shall remain in office until he or she resigns or is reappointed or replaced.*

143(4) *Despite subsection 23(2), the President and Chief Executive Officer of the New Brunswick Power Holding Corporation in office immediately before the commencement of this section shall, on the commencement of this section, be deemed to be appointed as the*

President and Chief Executive Officer of the Corporation for a term that is equal to the unexpired portion of his or her term as President and Chief Executive Officer of the New Brunswick Power Holding Corporation and, despite the expiry of his or her term and subject to subsections 23(10) and (11), shall remain in office until he or she resigns or is reappointed or replaced.

143(5) *On the commencement of this section, the appointments of the members of the board of directors of the New Brunswick Power Generation Corporation holding office immediately before the commencement of this section are revoked.*

143(6) *No action or other proceeding lies or shall be instituted against the Minister, the Crown or the Corporation as a result of the revocation of appointments under subsection (5).*

143(7) *No action or other proceeding lies or shall be instituted against the Minister, the Crown or the Corporation as a consequence of any person ceasing to hold a board of directors position in an amalgamating corporation as a result of the amalgamation under subsection 3(1).*

Arrangements

144 *For the purposes of any matter that comes before the Board after the amalgamation under subsection 3(1), any contracts, agreements or other arrangements entered into before the commencement of that subsection by any of the following corporations shall be deemed to be prudent and reasonable:*

(a) the New Brunswick Power Generation Corporation; or

(b) an amalgamating corporation that, before the commencement of subsection 3(1), was not subject to the regulatory oversight of the Board.

Transitional rates

145 *On the commencement of this section, the Corporation shall charge for the services referred to in section 102 in accordance with the rates authorized under Division B of Part V of the Electricity Act, chapter E-4.6 of the Acts of New Brunswick, 2003, that, but for the repeal of that Act, would have been effective on the date of the commencement of this section, until such rates are changed in accordance with this Act, and any authorization provided, or approval required, under that Division shall be deemed to have been provided or given to the Corporation.*

Change in rates without application

146(1) *On October 1, 2013, the Corporation may impose, across all rate classes, a uniform increase of not more than two percent in the rates it charges for the services referred to in section 102 without making an application to the Board for approval of the increase.*

146(2) *On October 1, 2014, the Corporation may impose, across all rate classes, a uniform increase of not more than two percent in the rates it charges for the services referred to in section 102 without making an application to the Board for approval of the increase.*

146(3) *The Corporation shall file new schedules of rates for its services referred to in section 102 with the Board within 30 days before any increase in the rates is made under subsection (2).*

146(4) *When filing new schedules with the Board in relation to any increase in the rates under subsection (2), the Corporation shall include in the schedules the date the authorization was given by the board of directors of the Corporation to increase the rates.*

146(5) *For the purposes of this Act, an increase in rates made under subsection (1) or (2) shall be deemed to be approved by the Board under Division B of Part 6.*

Transitional transmission tariff

147(1) *Subject to subsection (8), in this section, “transitional transmission tariff” means the approved transmission tariff that was in effect immediately before the commencement of this section, with the modifications prescribed by regulation and the deletions deemed to be effected under subsection 148(3).*

147(2) *The Corporation shall, with respect to transmission service and ancillary services, administer and comply with the transitional transmission tariff until that tariff is replaced by a new transmission tariff approved or fixed under subsection 113(12).*

147(3) *Transmitters, other than the Corporation, and users of the integrated electricity system shall, with respect to transmission service and ancillary services, comply with the transitional transmission tariff until that tariff is replaced by a new transmission tariff approved or fixed under subsection 113(12).*

147(4) *On the commencement of this section, any approval given by the Board in respect of the transmission tariff in effect immediately before the commencement of this section shall be deemed to have been given in respect of the transitional transmission tariff.*

147(5) *The Corporation may apply for approval of changes to the transitional transmission tariff until a new transmission tariff is approved or fixed under subsection 113(12), and*

subsections 113(2), (5), (8), (9) and (13) and section 127 apply, with the necessary modifications, for the purposes of this subsection.

147(6) If there is a conflict between any change approved or made under the authority of subsection (5) and a regulation referred to in subsection (1), the change prevails.

147(7) Section 116 does not apply in respect of the transitional transmission tariff.

147(8) If changes to the transitional transmission tariff are approved or made under the authority of subsection (5), any reference in subsection (2), (3), (5) or (7) to the transitional transmission tariff shall be read as a reference to the transitional transmission tariff as changed under the authority of subsection (5).

Transmission service reservations

148(1) In this section, “Attachment M” means Attachment M, entitled “MEPCO reservations”, of the approved transmission tariff in effect immediately before the commencement of this section.

148(2) On the commencement of this section, the long-term firm point-to-point transmission service reservations set out in Table 1, entitled “MEPCO RESERVATIONS”, of Attachment M shall be deemed to be held by the Corporation and the restrictions and obligations described in Attachment M shall be deemed not to apply in relation to the reservations.

148(3) For the purposes of section 147, Attachment M and all references to Attachment M shall be deemed to be deleted from the approved transmission tariff in effect immediately before the commencement of this section.

148(4) For the purposes of the application of the transitional transmission tariff under section 147, the deletion of Attachment M that is deemed to be effected by subsection (3) does not by itself abrogate or derogate from any right or obligation in any other portion of the transitional transmission tariff.

Standards deemed to be approved

149 The “NERC Standards”, standards of the North American Electric Reliability Corporation, that are listed in Appendix B of the document entitled “Market Procedure MP-08, Reliability Compliance Program New Brunswick (NBSO RCP-NB)”, published by the New Brunswick System Operator referred to in paragraph (h) of the definition “amalgamating corporations” in section 1, as that document read in the version in force immediately before the commencement of this section, shall be deemed on the commencement of this section to be approved by the Board and to be approved reliability standards.

Existing registrations and settlement agreements

150(1) *Owners, operators or users of the bulk power system registered with the New Brunswick System Operator referred to in paragraph (h) of the definition “amalgamating corporations” in section 1 or with the Northeast Power Coordinating Council Inc. immediately before the commencement of this section in respect of prescribed functions in respect of which an approved reliability standard applies on the commencement of this section shall be deemed, on the commencement of this section, to be registered with the Board under subsection 121(1) in respect of those same functions.*

150(2) *Any person deemed to be registered under subsection 121(1) as a result of the application of subsection (1) shall be notified by the Board of the deemed registration and subsections 121(3) and (4) apply with the necessary modifications to the deemed registration.*

150(3) *All of the information held immediately before the commencement of this section by the New Brunswick System Operator referred to in paragraph (h) of the definition “amalgamating corporations” in section 1 for the purpose of adopting reliability standards or monitoring compliance with or enforcing reliability standards shall be transferred to the Board on the commencement of this section.*

150(4) *Despite any other provision of this Act, any settlement agreement between the New Brunswick System Operator referred to in paragraph (h) of the definition “amalgamating corporations” in section 1 and the New Brunswick Power Transmission Corporation that is in effect immediately before the commencement of this section for the purpose of monitoring compliance with reliability standards, or setting out mitigation actions, remedies or sanctions in respect of reliability standards, has effect on and after the commencement of this section as if*

(a) the Corporation were substituted for the New Brunswick Power Transportation Corporation as a party to the agreement, and

(b) the Board were substituted for the New Brunswick System Operator as a party to the agreement.

Point Lepreau refurbishment project deferral account - hearings underway or previous decisions

151(1) *Any hearing, matter or thing commenced by the Board before the commencement of this section in relation to the deferral account referred to in section 139 but not completed before the commencement of this section shall be dealt with and completed by the Board in*

accordance with the law as it existed immediately before the commencement of this section, with any necessary modifications.

151(2) *Any decision, determination, direction, order, interim order or ruling of the Board made before the commencement of this section in respect of the New Brunswick Power Distribution and Customer Service Corporation with regards to the deferral account referred to in section 139*

(a) shall be deemed to be a decision, determination, direction, order, interim order or ruling made in respect of the Corporation, and

(b) shall be read with any necessary modifications resulting from the coming into force of this Act.

PART 11

CONSEQUENTIAL AMENDMENTS

Auditor General Act

152 *Section 1 of the Auditor General Act, chapter 118 of the Revised Statutes, 2011, is amended in the definition “agency of the Crown”*

(a) by repealing paragraph (l) and substituting the following:

(l) the New Brunswick Power Corporation, and

(b) by repealing paragraph (m);

(c) by repealing paragraph (n) and substituting the following:

(n) the New Brunswick Energy Marketing Corporation,

(d) by repealing paragraph (o);

(e) by repealing paragraph (p);

(f) by repealing paragraph (q).

Regulation under the Conflict of Interest Act

153 *Schedule A of New Brunswick Regulation 83-134 under the Conflict of Interest Act is amended*

(a) by striking out

New Brunswick Power Coleson Cove Corporation

New Brunswick Power Distribution and Customer Service Corporation

New Brunswick Power Generation Corporation

New Brunswick Power Holding Corporation

New Brunswick Power Nuclear Corporation

New Brunswick Power Transmission Corporation

(b) by adding after

Liquor Licensing Board

the following:

New Brunswick Energy Marketing Corporation

(c) by adding after

New Brunswick Lotteries and Gaming Corporation

the following:

New Brunswick Power Corporation

Regulation under the Crown Construction Contracts Act

154 Subsection 2(2) of New Brunswick Regulation 82-109 under the Crown Construction Contracts Act is amended

(a) by striking out

New Brunswick Power Coleson Cove Corporation

New Brunswick Power Distribution and Customer Service Corporation

New Brunswick Power Generation Corporation

New Brunswick Power Holding Corporation

New Brunswick Power Nuclear Corporation

New Brunswick Power Transmission Corporation

(b) by adding the following in alphabetical order:

New Brunswick Energy Marketing Corporation

New Brunswick Power Corporation

Edmundston Act, 1998

155 Subsection 20(3) of the Edmundston Act, 1998, chapter E-1.111 of the Acts of New Brunswick, 1998, is amended by striking out “within the territorial limits of the municipality” and substituting “within the territorial limits of the municipality and of St Basile 10 (an Indian reserve under the Indian Act (Canada))”.

Regulation under the Electoral Boundaries and Representation Act

156 Schedule A of New Brunswick Regulation 2006-27 under the Electoral Boundaries and Representation Act is amended

(a) in section 31 by striking out “New Brunswick Power Transmission Corporation” and substituting “New Brunswick Power Corporation”;

(b) in section 33 by striking out “New Brunswick Power Transmission Corporation” and substituting “New Brunswick Power Corporation”;

(c) in section 42 by striking out “New Brunswick Power Transmission Corporation” and substituting “New Brunswick Power Corporation”;

(d) in section 43 by striking out “New Brunswick Power Transmission Corporation” and substituting “New Brunswick Power Corporation”.

Regulation under the Emergency Measures Act

157 Section 4 of New Brunswick Regulation 84-7 under the Emergency Measures Act is amended

(a) in subsection (1)

(i) by striking out

New Brunswick System Operator

(ii) by adding the following in alphabetical order:

New Brunswick Power Corporation

(b) in paragraph (3)(o) by striking out “New Brunswick System Operator” and substituting “New Brunswick Power Corporation”.

Energy and Utilities Board Act

158(1) The Energy and Utilities Board Act, chapter E-9.18 of the Acts of New Brunswick, 2006, is amended by adding after section 1 the following:

Interpretation

1.1 For greater certainty, in this Act, a reference to an Act includes a reference to the regulations under that Act unless the context otherwise requires.

158(2) Subsection 40(3) of the Act is repealed.

158(3) Paragraph 50(2)(a) of the Act is repealed and the following is substituted:

(a) transmitters under the *Electricity Act*;

Municipalities Act

159 Subsection 111.2(2) of the Municipalities Act, chapter M-22 of the Revised Statutes, 1973, is amended by striking out “section 69 of the Electricity Act” and substituting “section 88 of the Electricity Act”.

New Brunswick Investment Management Corporation Act

160 Paragraph 6(c) of the New Brunswick Investment Management Corporation Act, chapter N-6.01 of the Acts of New Brunswick, 1994, is amended by striking out “New Brunswick Power Holding Corporation” and substituting “New Brunswick Power Corporation”.

Proceedings Against the Crown Act

161 Section 1 of the Proceedings Against the Crown Act, chapter P-18 of the Revised Statutes, 1973, is amended in the definition “Crown corporation” by striking out “the New Brunswick Power Nuclear Corporation, the New Brunswick Electric Finance Corporation,” and substituting “the New Brunswick Power Corporation, the New Brunswick Energy Marketing Corporation,”.

Regulation under the Provincial Loans Act

162 Section 3 of New Brunswick Regulation 84-65 under the Provincial Loans Act is amended

(a) by repealing paragraph (a.1);

(b) by repealing paragraph (a.2);

(c) by adding before paragraph (b) the following:

(a.5) the New Brunswick Power Corporation;

Regulation under the Public Purchasing Act

163(1) Section 28.2 of New Brunswick Regulation 94-157 under the Public Purchasing Act is amended by striking out “The New Brunswick Power Holding Corporation, the New Brunswick Power Generation Corporation, the New Brunswick Power Coleson Cove Corporation and the New Brunswick Power Nuclear Corporation” and substituting “The New Brunswick Power Corporation and the New Brunswick Energy Marketing Corporation”.

163(2) The Regulation is amended in Schedule B

(a) by striking out

New Brunswick Power Coleson Cove Corporation

New Brunswick Power Distribution and Customer Service Corporation

New Brunswick Power Generation Corporation

New Brunswick Power Holding Corporation

New Brunswick Power Nuclear Corporation

New Brunswick Power Transmission Corporation

(b) by adding the following in alphabetical order:

New Brunswick Energy Marketing Corporation

New Brunswick Power Corporation

Public Service Labour Relations Act

164 *The First Schedule of the Public Service Labour Relations Act, chapter P-25 of the Revised Statutes, 1973, is amended in Part IV*

(a) by deleting

New Brunswick Power Holding Corporation

New Brunswick Power Coleson Cove Corporation

New Brunswick Power Distribution and Customer Service Corporation

New Brunswick Power Generation Corporation

New Brunswick Power Nuclear Corporation

New Brunswick Power Transmission Corporation

New Brunswick System Operator

(b) by adding after

New Brunswick Investment Management Corporation

the following:

New Brunswick Power Corporation

New Brunswick Energy Marketing Corporation

Regulation under the Public Service Superannuation Act

165 *Schedule A of New Brunswick Regulation 84-105 under the Public Service Superannuation Act is amended*

(a) by striking out

New Brunswick Power Coleson Cove Corporation

New Brunswick Power Distribution and Customer Service Corporation

New Brunswick Power Generation Corporation

New Brunswick Power Holding Corporation

New Brunswick Power Nuclear Corporation

New Brunswick Power Transmission Corporation

New Brunswick System Operator

(b) by adding after

New Brunswick Community College (NBCC)

the following: